

Sl.21
22.09.2025
Court No.6
BP

C.O. 3492 of 2025

Shibayan Dey @ Shibayan Dey
-versus-
Shri Biswajit Pal @ Nepal & Ors.

Mr. Aditya Mondal
Mr. Oishik Chatterjee
Mr. Ramdhir Singh
... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being no. 23 dated 29th January, 2025 passed by the learned Civil Judge (Junior Division), 1st Court at Barrackpore in Title Suit No. 236 of 2021.

By the order impugned the application filed by the petitioner herein raising an objection as to the maintainability of the suit stood rejected.

The learned advocate appearing for the petitioner submits that there is no existence of the suit property in respect of which the opposite parties filed the suit. He submits that there is no existence of any grocery shop relating to which the plaintiffs have produced the trade licence. The plaintiffs have also not approached the Court with clean hands. There is also no electric connection in the name of

the alleged business. The plaintiffs have also no regard to the orders passed by the learned trial judge.

After going through the application filed by the petitioner raising an objection as to the maintainability of the suit, this Court finds that the same is not a pure question of law nor strikes at the root of the jurisdiction of the Court. The learned trial judge was right in holding that such issues of fact cannot be decided by way of framing of a preliminary issue and those issues can be decided only after recording evidence to be adduced by both the parties.

The learned trial assigned cogent reasons for rejecting the said application challenging the maintainability of the suit.

This Court does not find any reason to interfere with such order.

After this order is dictated the learned advocate appearing for the petitioner submits that the learned trial judge may be directed to dispose of the suit expeditiously.

The learned trial judge is requested to make an endeavour to dispose of the suit expeditiously.

Accordingly, C.O. 3492 of 2025 stands dismissed.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)