

10.03.2025.
47.
Ct.No.28
as

C.R.A. (DB) 369 of 2024

In Re: An appeal for necessary prayer under Section 341 of the Code of Criminal Procedure corresponding to Section 380 of BNSS, 2023.

In the matter of : ***Smt. Moni Manjusha Nandy.***
... Appellant.

Mr. Bibaswan Bhattacharya.
...for the Appellant.

Mr. Parimal Bhattacharyya,
Ms. Sima Majumder.
...for the defendants/Respondents.

1. Appellant filed an application under Section 340 of the Code of Criminal Procedure alleging respondent-defendant had knowingly made false averment that they are 50% owner of the suit property and thereby had denied the landlord-tenant relationship.
2. Learned Judge after hearing the parties held the issue is a triable one and dismissed the application.
3. Mr. Bhattacharyya contends dismissal of the perjury application amounts to pre-judging the issue which by the learned Judge's own reasoning was a triable one.
4. Learned Advocate for the respondent denies and disputes the contention his client had knowingly made false statement on oath in the written statement. He emphatically submits his client had purchased 50% of the suit property

from one Kanchan Nandy and has instituted a partition suit in respect of the self-same property.

5. We have considered the rival submissions at the Bar. Appellant took out an application for perjury alleging respondent had knowingly made false statement on oath in the written statement viz., he is 50% owner of the suit premises. On the other hand, respondent asserts his right in the property as a co-owner and contends a partition suit is pending.

6. Learned Judge rightly noted the issue is a triable one. While doing so, it was incumbent on the Judge to adjourn the hearing of the perjury application till disposal of the suit. Instead of following this course, the Judge dismissed the said application. Mr.Bhattacharya rightly contends this amounted to pre-judging the issue itself.

7. Accordingly, we set aside the order passed by the learned Judge and direct the application under Section 340 of the Code of Criminal Procedure shall be disposed of along with the main suit.

8. We make it clear we have not expressed any opinion with regard to the merits of the case which is kept open to be decided independently by the learned Trial Judge.

9. Accordingly, the appeal is disposed of.

10. There shall be no order as to costs.

(Gaurang Kanth,J.)

(Joymalya Bagchi, J.)

