

D/L- 30
20/02/2025
Ct. No.-6
Aritra

C.O. 4077 of 2024

Bholanath Dinda
Versus
Chaiti De @ Chaiti De (Pattanayak) & Anr.

Mr. Agniswar Bhuinya
...for the petitioners

Mr. Nilratan Banerjee
....for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the opposite party in a Misc. Case under Section 8 and 9 of the West Bengal Land Reforms Act, 1955.

By the order impugned the application filed by the petitioner herein under Order 7 Rule 11 (d) of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioner submits that the petitioner purchased demarcated portion of the suit property and, therefore, he cannot claim to be the co-sharer in view of Section 2(6) of the West Bengal Land Reform Act. He further submits that the opposite party herein prayed for preemption on the ground of co-sharer.

Heard the learned advocates for the opposite parties on such submission. Order 7 Rule 11(d) of the Code of Civil Procedure states that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by law.

The opposite party herein in the application in the Misc. Case under Section 8 and 9 of the West Bengal Land Reforms Act have specifically stated in paragraph 4 of the said Misc. Case that he is a co-sharer and no notice was served upon him at the time of transfer.

The learned advocate appearing for the petitioner draws the attention of the Court to the deeds which have been filed along with the miscellaneous case in support of his contention that the petitioner is not a co-sharer but is the owner of a demarcated portion of the said property.

The question as to whether the petitioner is having an undemarcated interest in the property or the owner of a demarcated portion of the property cannot be adjudicated while deciding an application under Order 7 Rule 11(d) of the Code of Civil Procedure. Such issue has to be decided only at the time of trial.

The learned Trial Judge rightly observed that there is no statement in the plaint wherefrom it can be said that the Misc. Case is barred by any law.

In view thereof, this Court is not inclined to interfere with the order impugned. It has been submitted by the learned advocates for the respective parties that the Misc. Case has already been fixed for arguments on March 4, 2025. The learned Trial Judge is requested to dispose of the Misc. Case as expeditiously as possible

without granting any unnecessary adjournments to either of the parties.

With the above observations CO 4077 of 2024 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)