

15.05.2025
Court No.1
Item No.16
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

SAT 2 of 2022

**Ratna Kumari Pradhan
Vs.
Seshmani Pradhan and Ors.**

Mr. Anand Bhandari
Mr. Urgen Lama
Mr. Mayank Bhandari

... For the Appellant.

1. The short question of law raised by the learned counsel for the appellant in the instant appeal is that a partition suit being O.C. Suit No.46 of 1987 was initially filed by the respondents and subsequently withdrawn without leave to file afresh.

2. The second partition suit was thereafter filed by the respondents being Title (Partition) Suit No.8 of 2003. The suit was decreed by the First Court namely, the Civil Judge (Junior Division) at Kurseong on 6th May, 2005 (Preliminary) and 13th May, 2005 (Final). The said decree was affirmed by the Lower Appellate Court in OC Appeal No.4 of 2005 by judgment and order dated 21st December, 2021.

3. According to the learned advocate for the petitioner, the second suit could not have been filed

after withdrawal of the first partition suit and without leave to file afresh.

4. This Court is of the clear view that a right to seek partition of family properties is not extinguished by reason of withdrawal of one suit for partition. The right to institute a fresh suit survives and continues until actual partition of the properties is completed by metes and bounds. It is another thing if the partition is mutually entered into by the family members. Even in such situation, a partition suit could be filed to give effect to the family agreement and/or settlement.

5. This Court, therefore, does not find any substantial question of law to admit the second appeal.

6. Accordingly, SAT 2 of 2022 is dismissed.

7. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)