

JPD. 7.
August 2, 2025.
MNS.

CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Appellate Side

CO No. 51 of 2025

Sri Raju Sarkar
Vs.
Sri Subhradeep Das and others

Mr. Partha Pratim Roy,
Mr. Debasish Mukhopadhyay,
Ms. Srishti Sarkar

... for the petitioner/defendant.

Mr. Bikramaditya Ghosh,
Mr. Partha Choudhury,
Mr. Subrata Sarkar,
Mr. Ved Rai,
Mr. Vivek Saha,
Mr. Mayank Bhandari

...for the opposite party no. 1/plaintiff.

1. Heard learned counsel for the parties.
2. The contention raised by the defendant/petitioner in the partition suit is that the learned trial Judge erroneously rejected an application of the petitioner under Order X rule 2 of the Code of Civil Procedure seeking the examination of the plaintiff/opposite party no. 1 in the suit.
3. Learned counsel for the petitioner submits that an examination at the outset, of the plaintiff/opposite party no. 1 himself, would

resolve the issue as to whether the plaintiff has been set up fictitiously by impersonation or is the genuine plaintiff.

4. It is argued that since a question as to the identity of the plaintiff has been raised, the learned trial judge ought to have granted the prayer of the petitioner and examined the veracity or authenticity of the identity of such person at the outset.
5. Alternatively, learned counsel for the petitioner submits that at least the said issue should be decided first as a preliminary issue.
6. Learned counsel for the plaintiff/opposite party no. 1 disputes the propositions raised by learned counsel for the petitioner.
7. Learned counsel submits that the learned trial Judge was justified in observing that the question of identity can be raised at further stages of the suit. Moreover, no written statement has been filed as yet.
8. I find from the records that the defendant/petitioner has not yet filed his written statement.
9. As such, the dispute as to identity of the plaintiff/opposite party no. 1, sought to be raised now, has not even been raised in the pleadings

and it would be absolutely premature to permit an examination of the identity of the plaintiff at this stage.

10. Secondly, Order X Rule 2 of the Code of Civil Procedure, which has been sought to be invoked, is not for the ascertainment of identity of the parties but to ascertain the scope of the disputes raised in the suit and/or to elucidate the matters in controversy.

11. Thus, the said provision was sought to be invoked erroneously by the petitioner.

12. Thirdly, the learned trial Judge was perfectly justified in observing that the controversy as to identity of the plaintiff, if raised, can very well be proved later during the trial.

13. In any event, it would be premature for the petitioner to argue that the issue of identity of the plaintiff is to be decided first as a preliminary issue, as no written statement has been filed as yet by the petitioner; thus, there arises no question of any issue being framed at this stage.

14. Even otherwise, Order XIV Rule 2 of the Code of Civil Procedure mandates that the court has to hear all issues and preliminary issues can be framed only if an issue raises a bar of law on a

pure question of law. The question as to identity of the plaintiff is not a pure question of law at all but a pure question of fact. Thus, the question of deciding such issue as a preliminary issue does not arise at all.

15. Hence, this Court does not find any infirmity or jurisdictional error or any illegality in the impugned order justifying interference with the same.

16. Accordingly, CO No. 51 of 2025 is dismissed on contest, thereby affirming order no. 09 dated March 3, 2025 passed by the learned Civil Judge (Senior division), Jalpaiguri in connection with Title (Partition) Suit No. 209 of 2024.

17. There will be no order as to costs.

18. Urgent certified copy of this order, if applied for, be given to the parties on their usual undertakings.

(Sabyasachi Bhattacharyya, J.)