

Item No. 05

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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO No. 2644 of 2025

Pareshnath Pal & Ors.
Vs
Gitarani Pal & Ors.

Mr. Partha Pratim Roy,
Mr. Malay Bhattacharya.

... for the petitioners.

Mr. Achintya Kumar Banerjee,
Ms. I Banerjee,
Mr. Adhip Narayan Banerjee.

... for the opposite parties.

1. This revisional application is directed against an order dated May 16, 2025 passed by the Learned Civil Judge (Senior Division), Bishnupur, District: Bankura, whereby the petitioners' application for framing preliminary issue and deciding the suit on the basis thereof under Order 14 Rule 2(2) of the Code of Civil Procedure, 1908 has been rejected.
2. The opposite parties have instituted Title Suit No. 98 of 2022 before the Learned Civil Judge (Senior Division), Bishnupur, Bankura praying, *inter alia*, for a decree for partition. In the said suit, the petitioners filed an

application under Order 14 Rule 2 (2) of the Code of Civil Procedure, praying for framing of preliminary issue as regards the maintainability of the suit contending that as all the properties co-owned by the parties to the suit had not been brought to the hotchpotch of the suit therefore the suit should be dismissed.

3. The Learned Trial Court has decided such application by the order impugned by holding that the issue is triable on evidence and as such the same should not be decided as a preliminary issue.
4. Feeling aggrieved thereby the petitioners have approached this by filing this present revisional application.
5. Mr. Partha Pratim Roy, learned advocate appearing for the petitioners submits that the Learned Trial Court has committed a serious error in rejecting the petitioners' application praying for framing of preliminary issue and deciding the maintainability of the suit. It is submitted that the said issue could have been decided as a preliminary issue in view of a statement made by the opposite parties in paragraph 4 of their plaint. It is submitted that it is settled law that partial partition is

not permissible and in such view of the matter, the bar to the maintainability of the suit was clear and apparent.

6. Mr. Achintya Kumar Banerjee, learned counsel appearing for the opposite parties submits that the order impugned has been rightly passed. It is submitted that the averment made in the plaint cannot be read to mean that the properties which the petitioners allege to be co-owned by all the parties are in the nature of joint properties unless, the petitioners prove the same to be so. Relying on a judgment of the Hon'ble Division Bench of this Court in the case of ***Shri Priya Ranjan Naha Vs. Smt. Mamata Naha & Ors (F.A.T. 487 of 2012)*** delivered on 9th November, 2022, it is submitted that although, partition of all the joint properties known to the co-sharers is a rule, there is also a complementary rule that a suit for partition cannot include the properties where each of the parties does not claim an interest.
7. He further relies on a judgment of the Hon'ble Supreme Court in the case of ***Foreshore Cooperative Housing Society Limited Vs. Praveen D Desai (dead) Through Legal representatives and Ors.***

reported in **(2015) 6 SCC 412** to contend that a triable issue cannot be decided as a preliminary issue.

8. Heard learned advocates appearing for the respective parties and considered the material on record.
9. The petitioners' sheet anchor is the averment made by the opposite parties in paragraph 4 of the plaint where the opposite parties have said that some plaintiffs have filed one MP Case "*in respect of Schedule A property with other property in which, Ld. SDEM of Bishnupur has been pleased to pass restrain order in respect of A Schedule property with other property*".
10. The said averment does not indicate that the "*other property*" is also a joint or co-shared or co-owned property. The petitioners' assertion that properties which are co-shared or co-owned or jointly owned have been left out of the hotchpotch of the partition suit would certainly require evidence to be adduced for being proved. Such question cannot be said to be a pure question of law which can be decided under Order 14 Rule 2(2) of the Code of Civil Procedure, 1908.
11. The Learned Trial Court as in such

connection, rightly observed as follows:

“Now, we have to first deal whether the suit is barred by any substantive law or not. In this context, it is apposite to mention here that particularly for a partition suit, cause of action is a bundle of facts which can be proved only through evidence. It is also pertinent to mention here that Section 14 of the W.B.L.R. Act deals the provision of partition. It is also apposite to mention here that whether the plaintiffs brought all the Ejmal properties in the hotchpotch of this suit or not, can only be considered during the trial of this suit and if plaintiffs failed to do the same, the decree of the suit shall not be in the favour of the plaintiffs. It is also apposite to mention here that defendants submitted the information of all the Ejmal properties owned possessed by the plaintiffs and defendants. It has already been decided by this Court vide Order no.17, dated 07-01-2025 as "However, I find that there is no abnormality and irregularity regarding form, nature and manner of the suit. Further from the entire pleadings, I do not find any ground to hold that the suit is barred by any provisions of law" but the defendants again filed the instant application by contending that the present suit is not maintainable in accordance with object as laid down in Chapter X of Co-ownership and Partition. Accordingly, it is very clear to this Court that defendants are taking various dilatory tactics to unnecessarily drag the suit without facing the trial.

Here, the defendants only filed the photocopies of the L.R. R-o-R showing all Ejmal property owned and possessed by the defendants. Now, the provision as laid down under Section 106 of Indian Evidence Act plays the role.

Hon'ble Supreme Court held in "*Trimukh Maroti Kirkan v. State of Maharashtra*" as "Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him". So, the burden is heavily lies on the defendants to establish their claim. It is a well-settled principle that unless and until those documents were exhibited in this suit, the contention of the defendants cannot be substantiate because the plaintiffs should be given opportunity to cross-examine the defendants pertaining to those documents showing several Ejmal properties between them. Mere averments in written statement does not prove the contention as taken by the defendants herein.

Therefore, those documents cannot be taken into consideration unless and until those documents were passed through an acid test which can only be done through the trial of this suit.

Accordingly, without trial of the suit it cannot be held that the instant suit is barred by the principle of Co-ownership and Partition because plaintiffs should given opportunity to establish their claim by producing proper documents in support to their claim. Even then the defendants also have the ample opportunity to establish their contention during the trial of this suit by cross-examining the plaintiffs pertaining to those documents.

Considering the above noted discussion, I find that there is no merit in the application to hold that the suit is barred under the substantive question of law."

9. In **Foreshore Cooperative Housing**

Society Limited (supra) the Hon'ble

Supreme Court has reiterated the well settled principle of law that in the amended provision of Order 14 Rule 2 of the Code there is a mandate to the Court that notwithstanding the fact that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues and the only exception to the aforesaid mandate is to the limited extent where discretion is conferred upon the Court, i.e. if the Court is of the opinion that the case or any part thereof may be disposed of “on an issue of law only”. It is only then that the Court would try such issue first. The exercise of the discretion according to the Hon’ble Supreme Court must relate to the jurisdiction of the Court or bar to the Court created by a law in force. It is thus well settled that if an issue requires evidence for its adjudication the same cannot be decided as a preliminary issue.

10. Having regard to the facts of the case, it is clear that the Learned Trial Court has exercised its discretion justly and properly and as such the impugned order does not call for any interference.

11. For all the reasons aforesaid, the order dated May 16, 2025 is left untouched. CO No. 2644 of 2025 stands dismissed.
12. There shall be no order as to cost.

(OM Narayan Rai, J.)