

Item No.2
18.02.2026
Court. No. 7
GB/CP

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI*

CO 12 of 2026

Umeshlal Pradhan
VS
Shanta Pradhan & Ors.

*Mr. Manoj Chakraborty,
Mr. Deborshi Dhar,
Ms. Taniya Bhowmik*

.....for the Petitioner.

1. This revisional application arises out of an order dated December 19, 2025, passed by the learned Civil Judge (Senior Division), Darjeeling in Title Partition No.24 of 2024 (08/24).
2. The learned court rejected an application under Order 7 Rule 11(a) and (d) read with Order 7 Rule 14(1) of the Code of Civil Procedure filed by the defendant no.1. The learned court was of the view that the defendant no.1 prayed for rejection of the plaint on the ground that the plaint did not disclose any cause of action. The same was undervalued and barred by law. From the pleadings the court found that the suit was for partition, injunction and consequential reliefs. The plaintiffs claimed joint ownership of the hotel business, namely, Hotel Polynia, which was being

run as a proprietorship business of the heirs of the deceased partners.

3. According to the plaintiffs, the partnership deed dated May 2, 1974 lost its effect, when the partnership stood dissolved upon the death of the last founding partner. The plaintiffs and the defendants were the heirs of the founding partner of the erstwhile partnership firm. Thus, the hotel business and the land on which the hotel was situated was a joint property of all the heirs and the partners.
4. According to the court, the plaintiffs did not pray for partition on the basis of the partnership deed. Instead, the plaintiffs prayed for partition of the property, by claiming equal right, title and interest as co-sharer.
5. The plaintiffs contended that they approached the defendant sometime in January 2024 for partition, but the defendant ignored and as such, the suit has been filed with the reliefs.
6. The court held that cause of action was a bundle of facts and the suit was at an early stage. The court was unable to come to a conclusion whether the suit was maintainable or not, without any evidence.
7. The learned advocate for the petitioner/defendant no.1 submits that the suit is not maintainable in its present form. A bare reading of the plaint would

indicate that the suit is barred under Section 48 of the Indian Partnership Act. The plaintiffs admitted that the hotel business was running and that the hotel business was one of the assets of the partnership firm. Thus, Section 48 of the Indian Partnership Act, 1932 was a complete bar to the continuation of the suit and the plaint should be rejected.

8. Learned advocate for the petitioner submits that Section 48 of the said Act provides the mode of settlement of accounts between partners and the rules to be followed with regard to the accounts of a firm after dissolution.
9. On a query by the court as to the fate of the partnership upon the death of the partners, the learned advocate submits that the deed provided that the partnership would stand dissolved.
10. I have considered the averments in the plaint and I find that the case run by the plaintiffs is that the predecessor-in-interest of the plaintiffs and the defendants had formed a partnership firm in the name 'Laxmi Hotel Industries' and the partnership deed was executed on May 2, 1974.
11. According to the partnership deed, all the partners had raised funds by obtaining loan from various institutions and they proportionately contributed to the capital for the construction of the building on the schedule land.

12. Paragraph 5 of the plaint provides the date of death of the partners and the heirs and legal representatives who survived the deceased partners. The last and the fourth partner expired on August 1, 1990. Thus, it has been stated in paragraph 6 that the business in the name of Hotel Polynia was continuing under a mutual understanding between the heirs and successors of the founder partners, since 2021. The plaintiffs and the defendants have equal right and share in the assets of the said hotel and on the land. The heirs of the founding partners were running the business as a proprietorship concern.
13. In paragraph 9, it has been explained how the parties fell apart and the citizenship of the defendant no. 1 was in doubt. Thus, the plaintiffs asked for partition of the said business, which was being run as a proprietorship business, after the dissolution of the partnership upon the death of all the partners.
14. The defendant no. 1 had taken over the control and management of the said business, and threatened the very right of the plaintiffs. The said defendants were running the business in an arbitrary and whimsical manner.
15. In such view of the matter, the plaintiffs claimed partition of the hotel business, which was standing on the schedule land. In view of the averments in

the plaint which have been discussed hereinabove, it will not be possible for the court to come to a conclusion at this stage that, the partnership business had continued and the hotel business was a partnership business. The deceased partners had expired and the averments in the plaint do not indicate that the partnership firm was reconstituted.

16. The specific case of the plaintiffs is that, once the partners expired, the partnership business dissolved and all the heirs and legal representatives of the four partners were joint owners of the business as also the assets and the land on which the said partnership existed. In such view of the matter, the learned court rightly held that the plaint could not be rejected, as it disclosed a cause of action. The suit was at its nascent stage.

17. It is a well-settled principle of law that, an application for rejection of a plaint has to be decided upon a meaningful reading of the plaint. The contentions of the defendants in the application for rejection cannot be looked into. The statements of the defendant no. 1 or his objections are not relevant. The facts stated in the plaint are deemed to be true and correct.

18. Under such circumstances, I do not find any illegality in the order impugned.

19. The revisional application is dismissed.

20. The maintainability of the suit shall be decided by the court as one of the first issues.
21. The observations made hereinabove, are restricted only to the disposal of the revisional application.
22. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)