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W. P. 22255 (W) of 2016
(Kushal Majhi Vs. State of West Bengal & Ors.)

Mr. Santosh Kumar Chakraborti
Mr. Swapan Kumar Mitra

.....**For the petitioner**

Mr. Nilanjan Bhattacharjee
Ms. Paramita Roy

.....**For the respdt. no. 5**

This writ petition is directed against an order dated 19th August, 2016 passed by the Executive Magistrate, Kalyani under Section 144 of the Code of Criminal Procedure.

Mr. Bhattacharjee, learned advocate for the private respondent seeks to support the order impugned by referring to sub-section (5) of section 144 of the Code.

That a writ petition questioning an order under Section 144 of the Code of Criminal Procedure is maintainable, is settled law [see : (1982) 1 SCC 71].

The order impugned has been perused. However, it appears that the very purpose for which proceedings may be drawn up under Section 144 of the Code have not been mentioned in the order impugned; on the contrary, direction has been issued for demarcation of an undivided joint property, which is not permissible. The magistrate ought to realize that in respect of any dispute between private parties arising out of enjoyment of an immovable property, which is

purely civil in nature, the aggrieved party should be left free to approach the civil court for relief. The order impugned being indefensible, stands set aside.

This order shall not preclude the private parties to approach the civil court in accordance with law.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Dipankar Datta, J.)