

AD.8.
August 2, 2021.
MNS.

C. O. No. 148 of 2019
(**Via video conference**)

Sri Udayan Samanta and others
Vs.
Sri Upayan Samanta and others

Mr. Tanoy Chakraborty,
Mr. Abhishek Singh

... for the petitioners.

Despite previous service, none appears for the opposite parties, although the petitioners are represented through counsel.

The contention of the petitioners is that the court below ought to have allowed the application of the petitioners under Section 24 of the Code of Civil Procedure for transfer of the declaratory suit filed by the petitioners regarding the veracity of the gift deed.

Such transfer is sought for the purpose of analogous hearing of the said suit along with a partition suit, also filed by the petitioners.

Learned counsel for the petitioners contends that the cardinal issues in both the matters are relevant for adjudication of each other. Since the partition of the suit property would involve a declaration of title, the outcome

of the suit challenging the gift deed, which would change the shares of the parties respectively, is crucial and has a direct bearing on the result of the partition suit.

It is evident from the impugned order that the court below proceeded on the premise that the issues involved in the two suits would not be the same.

However, by filing of the suit challenging the gift deed, the present petitioners, who are plaintiffs in both the suits, have virtually taken a stand consistent with their original pleadings in the partition suit. In the event the gift deed is negated on the suit of the petitioners, the shares of the parties in the suit property shall vary from the shares, if the suit is decided otherwise.

Hence, although there may be a difference in the issues to be formulated in the two suits, the defence in the partition suit, which would be one of the bases of the preliminary decree declaring the respective shares/title of the parties, is interconnected with that taken in the other title suit challenging the gift deed. Hence, the issues involved in the two suits, being complementary to each other, are inextricably intertwined and, as such, cannot be separated from each other.

In such view of the matter, it would be prudent if both the suits are heard together.

Accordingly, C. O. No. 148 of 2019 is allowed, thereby setting aside the order dated October 5, 2018 passed by the District Judge, Purba Medinipur, in Miscellaneous Case No. 26 of 2014 and directing transfer of Title Suit No. 41 of 2013, pending before the Civil Judge (Junior Division), First Court at Tamluk, to the Court of the Civil Judge (Senior Division) at Tamluk, for being heard analogously with Title Suit No. 26 of 2010, which is pending before the latter court.

The petitioners shall communicate this order, accompanied by a server copy thereof, to the learned advocate appearing for the opposite parties in the court below, as well as on both the courts concerned, to ensure due compliance of the same.

The courts below and the parties shall act on the written communication of the learned advocate for the petitioners, accompanied by a server copy of this order, without insisting upon prior production of certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the

parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)