

S/L 12
15.02.2021
Court. No. 19
GB

C.O. 282 of 2021

Sri Bipulananda Panda
Vs.
Sri Shyam Sundar Sasmal & Ors.

(Through Video Conference)

Mr. Rabindra Nath Datta.

...for the Petitioner.

*Mr. Ajay Debnath,
Mr. Asit Kumar De,
Mr. Devranjan Das.*

...for the Opposite Party No.6.

The petitioner is the preemptor in J. Misc. Case No.47 of 2018, which was pending before the learned Civil Judge (Junior Division), 1st Court at Contai and which has abated on the death of Anath Bandhu Pand. The opposite party no.6 filed J. Misc. Case No.12 of 2017 a prior suit for preemption with regard to the selfsame property, which is the subject matter of dispute in J. Misc. Case No.47 of 2018.

By two orders passed in the respective misc. cases, the learned court below directed that the two preemption cases should proceed analogously as the subject matter in dispute were same and the same transfer was challenged in the respective preemption cases. Subsequently, J. Misc. Case No.47 of 2018 abated. The petitioner took out an application under Order 22, Rule 10 of the Code of Civil Procedure. The learned court below rejected the said application. A civil revision was filed. This Court by an order dated July 31, 2019 disposed of C.O. 2520 of 2019 granting liberty to the

petitioner to file an appropriate application under Order 22, Rule 9 of the Code of Civil Procedure along with an application under Section 5 of the Limitation Act. The said applications were filed around November, 2019, which is on record and registered as J. Misc. Case No.67 of 2019. The opposite parties have also filed their opposition to the said application. During the pendency of the said applications (J. Misc. Case 67 of 2019) in J. Misc. Case No.47 of 2018, the opposite parties filed an application under Section 151 of the Code of Civil Procedure in J. Misc. Case No.12 of 2017, for an order that the learned court below will hear out the J. Misc. Case No.12 of 2017 separately in view of the fact that the orders for analogous hearing would not survive as the pre-emption case, J. Misc. Case 47 of 2018 had already abated.

The learned court below by the order dated January 27, 2021 allowed such application of the opposite parties on the ground that unless and until the suit, which was abated, was ultimately restored, analogous hearing would not be possible and a lot of time would have been consumed in the process causing unnecessary delay in disposal of the J. Misc. Case No.12 of 2017. This delay would cause irreparable loss and injury to the opposite party no.6, who is claiming preemption on the ground of Bargadarship.

Mr. Datta, learned advocate appearing on behalf of the petitioner submits that once there were two orders directing analogous hearing of the suits, unless and until the J. Misc. Case No.47 of 2018 was restored to its original file

and number upon setting aside abatement, J. Misc. Case No.12 of 2017 should not proceed as similar points are in issue and the same deed has been challenged and separate hearing of the J. Misc. Case No.12 of 2017 would result in rendering the petition filed by the petitioner as infructuous and the petitioner will be non-suited and his right of preemption will not be adjudicated at all.

Mr. Debnath, learned advocate appearing on behalf of the opposite parties submits that once the Misc. case has abated, the question of analogous hearing does not arise. He further submits that the suit abated way back in 1999 but the petitioner waited for a long time before filing the application for substitution. He further submits that owing to the laches on the part of the petitioner in getting his Misc. case restored upon setting aside abatement, upon condonation of delay, the valuable right of the preemptor in J. Misc. Case No.12 of 2017 will be denied and the delay would cause injustice.

Having considered the rival submissions made on behalf of the respective parties, I find that even the opposite parties did not take active steps for disposal of J. Misc. Case No.12 of 2017 until November 18, 2019, when they filed an application for separate hearing of the Misc. case. Thus, the delay has been caused by both the parties and under such circumstances, this Court is of the opinion that justice would be sub-served if the order dated January 27, 2021 is set aside, thereby directing the learned court below not to proceed with J. Misc. Case No.12 of 2017 for a period of three

months. If the petitioner is successful in getting the J. Misc. Case No.47 of 2018 restored to its original file and number upon setting aside abatement, upon condonation of delay then the learned court below shall proceed analogously with both the applications for preemption. If within the aforementioned period, the petitioner is unsuccessful in getting the J. Misc. Case No.47 of 2018 restored upon setting aside abatement upon condonation of delay, the learned court below shall pass necessary orders fixing J. Misc. Case No.12 of 2017 for hearing separately.

This Court has not gone into the merits of the contentions of the petitioner with regard to the merits involved in the respective applications and the learned court below shall proceed in accordance with law.

The learned court below is directed to proceed with the hearing of the application filed under Order 22, Rule 9 of the Code of Civil Procedure along with the application under Section 5 of the Limitation Act filed in J. Misc Case 47 of 2018 expeditiously and dispose of the same within 2 months from communication of this order, without granting unnecessary adjournments to either of the parties.

The revisional application is disposed of.

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

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)