

07.04.2021
Sl. No. 12
srm

C.O. No. 340 of 2021
Mampi Ganguly (Ghosh)
Vs.
Ajit Saha

Mr. Subir Banerjee,
Ms. Shreyasi Sengupta

...for the Petitioner.

Despite service notice appears on behalf of the opposite party.

Records reveal that on November 2, 2019, the suit was kept for *ex parte* hearing. The petitioner is the plaintiff in Title Suit No.1 of 2019 pending before the learned Civil Judge (Senior Division), 1st Court at Malda. The suit is for declaration, injunction and recovery of possession. The petitioner has prayed for a declaration that the impugned deed of sale being No.2406 of 2010 was null and void. The defendant has not appeared in the suit. The petitioner filed an application for appointment of a handwriting expert. The learned Court below rejected the said application on the ground that the deed itself had not been tendered in evidence.

I do not find any illegality in the order impugned. Unless the deed is brought on record and tendered in evidence, the question of appointment of a handwriting expert

for comparison of the signature of the executor/maker of the deed with other documents on record could not arise.

It is the contention of the petitioner that the defendant is not appearing in the suit and the deed is in the custody of the defendant who is withholding the said deed. There is no possibility that the petitioner can file the original deed. If that be so, then the provisions of the Evidence Act should be resorted to by the petitioner and the deed may be tendered in evidence in the manner provided, subject to the satisfaction of the learned Court below that reasons assigned by the petitioner is genuine and secondary evidence can be allowed. If the learned Court below ultimately allows secondary evidence/ certified copy of the deed to be tendered in evidence, then the petitioner shall be at liberty to renew his prayer for handwriting expert or for comparison by court of the signatures in terms of the provisions of the Evidence Act and the learned court below shall dispose of such application on merits independently.

The order impugned is modified to the above extent.

However, all these issues will be decided by the learned Court below on the merits of the case and on the entitlement of the petitioner to the reliefs prayer for.

This Court has not gone into the claim of the petitioner but has only observed the provisions of law applicable.

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.)