

31.08.2021
Ct No.7
Item.8
(RKB)

C.O. No. 690 of 2021

Rehana Khatun.

Vs.

Mrs. Arunima Ahmed

Mr. Sukanta Saha, Adv.

.... For the plaintiff/petitioner.

Mr. Amal Krishna Saha, Adv.,

Mr Souvik Sarkar, Adv.

.... For the defendant/ opposite party.

The impugned Order No. 10 dated January 20, 2021 passed by Learned Civil Judge (Senior Division), 3rd Court, Paschim Medinipore in Title Suit No. 536 of 2019, staying the suit in application of provisions under Section 10 read with Section 151 of Civil Procedure Code, till disposal of Title Suit No. 356 of 2019 of the same Court is the subject of challenge in this revisional application.

Admittedly two suits being T.S No. 356 of 2019 and T.S. No. 536 of 2019 are pending before the Learned Civil Judge (Senior Division), Paschim Medinipore. Without any controversy T.S. No. 356 of 2019 is for partition and other consequential relief, which is older than the subsequent suit being T.S. No. 536 of 2019 praying for declaration and injunction. In the former suit being T.S. No. 356 of 2019, Mrs. Arunima Das (Ahmed) being defendant of T.S. No. 536 of 2019 filed a suit for partition against her mother and brother claiming her half share in the suit property mentioned in the schedule of plaint.

One Rehana Khatun being plaintiff of T.S. No. 536 of 2019 purchased the suit property from one Chayan Kr. Das (being defendant No.1 of T.S. No. 356 of 2019) by registered deed of sale, dated 27.05.2019 for valuable considerations.

After purchase, Rehana Khatun got her name mutated with the concerned Municipality. The vendor of Rehana Khatun (plaintiff of T.S. 536 of 2019) acquired the said property from his grandfather, namely Tarani Kanta Das, the erstwhile owner of property, by registered deed of gift dated 30.07.2021. In the former suit for partition, a specific challenge has been there, that the deed of gift of Chayan Kr. Das giving rise to the title of plaintiff Rehana Khatun in T.S. No. 536 of 2019 is manufactured one and simply to defraud the rightful owner for some designed purpose.

Admittedly Rehana Khatun being the plaintiff of T.S. No. 536 of 2019 is a subsequent stranger/purchaser of the suit property, mentioned in the respective schedule of the plaint, who admittedly purchased the same from Chayan Kr. Das, being the brother of Arunima Das (Ahmed), and there is a partition suit pending amongst the co-sharers claiming their respective share in the suit property.

Learned court below after applying the tests of Section 10 of C.P.C. proceeded to pass an order

staying T.S. No. 536 of 2019 till disposal of T.S. No. 356 of 2019.

Mr. Amal Krishna Saha, learned advocate for the opposite party is fair enough to submit that both the suits are pending before the learned Civil Judge (Senior Division), 3rd Court, Paschim Medinipore. He proposes that instead of staying the T.S. No. 536 of 2019 till disposal of T.S. No.356 of 2019, both the suits should be tried analogously by the same Judge, before whom both the suits being T.S. No. 536 of 2019 and T.S. No. 356 of 2019 are pending.

Mr. Sukanta Saha, learned advocate for the petitioner extending his sincerest cooperation submits that if both the suits are tried anagonously, then nobody would suffer any prejudice for determination of real controversy between the parties.

Upon perusal of pleadings of both the suits, it appears that proposal advanced by the learned advocate for the opposite party, carries strong substance and deserves to be respected in the given facts and circumstances of this case. It will definitely shorten the tenure of litigation and also prevent multiplicity of decisions. More so, parties to the subsequent suit are litigating from a common title standing in the name of erstwhile owner of subject land, namely Tarani Kanta Das.

When there is no chance of causing any prejudice to either of the parties to this case by

reason of allowing an analogous trial to be conducted, so far as T.S. 536 of 2019 and T.S. No. 356 of 2019 are concerned, the Court is of the view that the purpose of justice can be best sub-served by directing an analogous trial to be conducted, so far as T.S. Nos. (T.S. 536 of 2019 and T.S. No. 356 of 2019) mentioned hereinabove are concerned .

Learned Civil Judge (Senior Division), 3rd Court, Paschim Medinipore is directed to conduct analogous trial of T.S. No. 356 of 2019 and T.S. No. 536 of 2019 upon observing the required formalities in accordance with provisions of law.

The stay granted in T.S. No. 536 of 2019 by order dated 20.01.2021 till disposal of T.S. No. 356 of 2019 is thus set aside.

Learned Civil Judge (Senior Division), 3rd Court Paschim Medinipore is further directed to give sufficient opportunity to both the parties involved in this case, so that their respective cases are duly presented in terms of their respective pleadings and allow the parties to adduce adequate evidence required for effective adjudication of issues involved therein.

With these observations and directions the revisional application being CO No. 690 of 2021 is disposed of.

Urgent certified photostat copy of this order be given to the parties, if applied for, upon compliance with requisite formalities.

(Subhasis Dasgupta, J.)