(35) & (36)
06.08.2021
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(**Via Video Conference**)

CO No. 705 of 2021
M/s. K.N. Paul & ors.
-versus-
Iftekhar Alam
And

CO No. 706 of 2021

M/s. K.N. Paul & ors.
-versus-
Iftekhar Alam

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. D. Ganguly,
Mr. K. Bhattacharya, …. for the petitioners.

Mr. Dev Kumar Sharma, … for the opposite party.

A common issue has fallen for consideration in these two revisional applications under Article 227 of the Constitution of India, as such, are taken up for analogous hearing and disposal.

The petitioners have filed a suit being Title Suit No. 949 of 2016, inter alia, for a decree of eviction of the opposite party from the property involved in the said suit.

The opposite party has also filed a suit being Title Suit no. 1437 of 2015, inter alia, for a decree of declaration of his lawful right to occupy the selfsame property involved in the aforesaid Title Suit No. 949 of 2016.

Both the said suits are pending before the 4th Court of learned Civil Judge (Junior Division), Howrah.

The petitioners are contesting the suit filed by the opposite party with a counter-claim, inter alia for a decree of

declaration that the opposite party has no right to run any parallel business in the suit property under the name and style of 'Khwaja Azmeri Fish Co.'.

In both the aforesaid two suits, the petitioners filed two separate applications under Section 151 of the Code of Civil Procedure for analogous trial and disposal of the said suits.

The learned Trial Judge on March 03, 2021 passed orders separately in the said two suits on the said applications thereby refused the prayer of the petitioners for analogous trial of the said two suits but for the convenience of the parties to attend Court directed that both suits shall run simultaneously from the date of the said order.

The said orders dated March 03, 2021 are under challenge in these two revisional applications.

Mr. Debjit Mukherjee, learned advocate appearing on behalf of the petitioners submits that since the parties to both the suits are same and they are claiming their right over the selfsame suit property, the learned Trial Judge should not have refused the prayer of the petitioners for analogous trial of the said two suits only on the ground that the stages of the said two suits are different, particularly when, such difference of stages in the said two suits has been caused due to filing of different interlocutory applications by the opposite party in the suit for eviction filed by the petitioners aiming to frustrate the direction of the Co-ordinate Bench passed on November 22, 2019 in CO 3574 of 2019 for time-bound disposal of the said eviction suit.

Mr. Dev Kumar Sharma, learned advocate appearing on behalf of the opposite party refuting the contention of Mr. Mukherjee submits that analogous trial of the said two suits cannot be done merely because of similarities of the parties and suit property, when the issues to be decided in the said two suits are different.

He further submits that excepting one application for repair of the suit property, the opposite party did not file any other application in the said eviction suit; he, however admits that the commission work in connection with the said prayer of the opposite party for repair of the suit property is yet to be completed.

Having heard the learned advocates for the parties and on perusal of the records it appears that in view of the nature of counter-claim of the petitioners in the suit filed by the opposite party, the issues to be decided in the said two suits are different, therefore, the learned Trial Judge has not committed any error in exercise of his jurisdiction in refusing the prayer of the petitioners for analogous trial of the said two suits and in directing that the said suits shall run simultaneously.

However, the opposite party cannot render the aforesaid direction of the Co-ordinate Bench for time-bound disposal of the suit for eviction infructuous by deferring the work of the Commissioner appointed in connection with his prayer for repair of the suit property.

Mr. Sharma assures this Court that his client shall co-operate with the Commissioner to complete his work.

Be that as it may, the Commissioner is directed to complete the commission work and to submit his report expeditiously. The Commissioner is directed not to give unnecessary adjournment to the parties.

CO 705 of 2021 and CO 706 of 2021 are thus disposed of with the above terms. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the party subject to compliance of all requisite formalities.

(Biswajit Basu, J.)