

23.04.2021
Ct. 7
D/L 10
ab

C.O. 751 of 2021
(Via Video Conference)

Amaresh Saha
-Vs-
Samaresh Saha

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
... for the petitioner

Mr. Sourav Sen,
Ms. Sayani Bhattacharya,
... for the opposite party

The defendant in a suit for partition has preferred the instant application under Article 227 of the Constitution of India challenging an order dated January 22, 2021 passed by the learned Civil Judge (Senior Division), 3rd Court, Howrah in Title Suit No. 436 of 2016,

By the order impugned, the application filed by the petitioner herein under Section 10 of the Code of Civil Procedure was rejected.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the petitioner herein previously filed a suit being Title Suit No. 36 of 2007 for declaration of title and for permanent injunction against

the opposite party herein. The trial Court dismissed the said suit and the First Appellate Court affirmed the said decree. Thereafter the petitioner preferred a second appeal being SAT 489 of 2014 before this Hon'ble Court, which is still pending.

Mr. Banerjee further submits that since the second appeal is pending before this Court, the subsequent suit being Title Suit No. 436 of 2016 filed by the opposite party herein should be stayed till the disposal of the second appeal in order to avoid conflict of judicial decisions.

Mr. Sen, learned advocate appearing for the opposite party submits that the issues involved in the two suits are not same and identical and the learned trial Judge was perfectly justified in rejecting the application under Section 10 of the Code of Civil Procedure filed by the petitioner.

I have heard the learned advocates for the parties and have considered the materials on record. After going through the pleadings of the parties in the said suits, this Court finds that the suit property is the same. Considering the nature of the said suits, this Court is of the view that the final decision of this Court in SAT 489 of 2014 shall affect the fate of the instant suit.

Thus, in order to avoid conflict of judicial decisions Title Suit No. 436 of 2016 may be allowed to proceed till the stage of commencement of arguments.

This Court, therefore, directs that the proceedings in connection with Title Suit No. 436 of 2016 may continue till it reaches the stage of argument. All proceedings thereafter shall await the decision of this Court in SAT 489 of 2014.

C.O. 751 of 2021 is disposed of with the aforesaid directions without, however, any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(**Hiranmay Bhattacharyya, J.**)