

CO No.890 of 2021

Nitai Charan Rana and others
Vs.
Smt. Santabala Rana and others

(Via video conference)

Mr. Raghunath Das

.... for the petitioners

Mr. Milan Nandi

.... for the opposite parties

Learned counsel for the petitioners contends that, despite a previous direction of analogous hearing of the petitioners' suit, bearing Title Suit No.404 of 2017, along with Title Suit No.44 of 2014, the latter having been filed upon withdrawal of a previous suit filed by the opposite parties themselves bearing Title Suit No.43 of 2014, and even after a specific order by the trial court calling for the records of Title Suit No.43 of 2014, the trial court, by the impugned order, has reheard such prayer and rejected the same.

Learned counsel for the petitioners further contends that the records of Title Suit No.43 of 2014 are relevant and vital since the two suits, directed to be heard analogously, were at the stage of argument but, upon withdrawal of Title Suit No.43 of 2014, Title Suit No.44 of 20214 has been filed afresh, which will unnecessarily delay the analogous hearing if the latter suit is taken up from the initial stages. Since the subject-matter and evidence of Title Suit Nos.43 and 44 of 2014 are similar, the analogous hearing can only take place along with Title Suit No.404 of 2017 in the event the evidence and other records of Title Suit No.43 of 2014 are also brought to the court hearing Title Suit No.404 of 2017.

Learned counsel appearing for the opposite parties opposes such contention and submits that Order VII Rule 10, read with Rule 10A, of the Code of Civil Procedure permits only the plaintiffs in the suit to ask for return of the plaint and, as such, there is no question of calling for the records of the non-existent Title Suit No.43 of 2014 at this juncture.

Upon going through the materials on record and hearing learned counsel, it is evident that the opposite parties have merely adopted a ploy to

frustrate the early hearing of the two suits by withdrawing Title Suit No.43 of 2014 at a mature stage and instituting Title Suit No.44 of 2014 afresh on similar lines. Since Title Suit No.43 of 2014 had already reached the argument stage and was to be heard analogously with Title Suit No.404 of 2017, it would be essential to call for the records of Title Suit No.43 of 2014 for effective and complete adjudication of Title Suit No.44 of 2014, analogously with Title Suit No.404 of 2017.

Moreover, Order VII Rule 10 and/or Rule 10A of the Code cannot stand as a bar to the powers of the court to call for the records of any other case, if found relevant for the purpose of hearing any suit. Order XIII Rule 10 of the Civil Procedure Code confers ample power on the court to do so. As such, the argument advanced by the opposite parties is not acceptable. Rather, the petitioners are justified in arguing that the records were already directed to be called for vide Order No.79 dated September 25, 2019 in respect of Title Suit No.43 of 2014, which has already attained finality.

Thus, the impugned order, in effect recalling its own order dated September 25, 2019, is *ex facie* without jurisdiction and ought to be set aside.

On the reasons as discussed above, CO No.890 of 2021 is allowed, thereby setting aside the impugned order bearing Order No.89 dated February 18, 2021 and directing the court below to take steps immediately to call for the records of Title Suit No.43 of 2014, despite the same having already been disposed of, for effective and complete analogous hearing of Title Suit No.44 of 2014 along with Title Suit No.404 of 2017, as previously directed by this court.

The trial court shall endeavour to dispose of the two suits from the argument stage, as directed previously, positively within three months from the date of communication of this order to the court below.

It is made clear that the time-frame of three months is peremptory and has been granted only in consideration of the difficulties being faced by the courts below due to staggered functioning of the courts in view of the prevalent pandemic situation.

The parties and the trial court shall act on the communication of the learned advocates for the parties accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)