

22.07.2021

Sl. No.2

Court No.9
BM.

-
CO 975 of 2021

Abu Salah Ansari Khan

Vs.

**Mustak Ahmmed Khan, legal heir since Abdul
Gaffar Khan Deceased and Others.**

(Via Video Conference)

Mr. Kushal Chatterjee

Mr. A. Pradhan

Mr. T. K. Mahapatra ... for the petitioner

Mr. Kushal Chatterjee, learned advocate for the petitioner moved this revisional application under Article 227 of the Constitution of India for appropriate order for expeditious disposal of the partition suit being Title Suit No.66 of 2016 now pending in the court of Civil Judge, Senior division, Haldia in the District of Purba Medinipur.

My attention is invited to Order No.28 dated 12.03.2019 wherefrom it is revealed that the plaintiff was examined as PW-1 but his cross examination was deferred at the instance of the defendant no.1 therefore, it cannot be readily be said that there was any impediment on the part of the learned court in not taking up the case further. However, it is pointed out that the learned court after conclusion of the cross examination in part directed issuance of summons upon the defendant nos.3, 4, 6, 7 & 9 and the service of summons were not received. Order No.17 dated 20.01.2018 reflects that the plaintiff had

already filed requisites upon defendant nos.3, 4, 6, 7 & 9 and learned Court directed the office to issue the same. Yet by subsequent order plaintiff was directed to take fresh steps upon them immediately. This is how the delay in trial was at the end of the office of the concerned Court. However, the order no.35 dated 10.12.2019 reflects that the plaintiff had filed requisites of summons upon the defendant nos.3/ka, 3/chha, 6, 7, 9 through Registered Post at the risk of the party, since the defendant no.3 had expired, steps were taken for substitution of his heirs and by order no.38 dated 20.5.2020, the plaintiff was directed to take fresh steps upon defendant nos.6, 7/3/cha & 3 Chha fixing the date for S.R and A.D upon 3 ka to 3 una and 9. The order no.39 dated 24.02.2021 would reveal that summons upon the defendant nos. 6 & 7 were received on 11.03.2020 with a postal note "Refused" but they have not taken any steps. So learned Court fixed the date for hearing of the suit ex-parte as against the defendant nos.6 & 7. It appears that the learned trial court is not keeping vigil of the service of summons upon the defendant though the requisites were filed by the plaintiff and directions were given for issuance of the same but on the date of SR and AD, it was incumbent on the part of the learned court to first scrutinize the record by obtaining the report of the Process Server of the Nazir with regard to the service being effected upon the

defendants and only after service be complete the suit ought to have been posted for Peremptory Hearing of the suit. But in this case, learned Court after cross examination of PW-1 by the defendant shifted from further hearing of the suit.

The instant application has been preferred by the defendant no. 1 being as co-plaintiff in partition suit seeking expeditious hearing of the suit. Therefore, after ascertaining the service of summons upon the defendants, learned trial Court is directed to take steps to expedite the suit as early as possible.

With the above direction, this revisional application being C.O. 975 of 2021 is disposed of as it will not prejudice any of the parties.

(Shivakant Prasad, J.)