

07.12.2021
Item No. 22
Court No.18
A.J.

C.O. 2054 of 2018
(Through Video Conference)

Dudhkumar Mondal & Ors.
-Vs-
Monoranjan Mondal & Ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal.
...for the petitioners.

Mr. Prasanta Bishal.
.....for the opposite party no.7.

The plaintiffs in a suit for declaration of title and injunction are the petitioners of the present application under Article 227 of the Constitution of India which is directed against Order No. 179 dated May 28, 2018 passed by the 2nd Court of the learned Civil Judge (Junior Division), Baruipur, District- 24 Parganas (South) in the said suit being Title Suit No. 96 of 2005.

Proof of some documents filed on behalf of the defendants is pending, as such, recalling of D.W.₁ was prayed for. The learned Trial Judge by the order impugned has allowed the said prayer.

Mr. Sounak Bhattacharya, learned advocate appearing on behalf of the petitioners submits that the documents sought to be proved through D.W.₁ are inadmissible but the learned Trial Judge while allowing the application for recalling of D.W.₁ has observed that except one, other three documents can be marked exhibits.

He further submits that in a civil suit, the procedure to mark documents suggested by the Hon'ble Supreme Court in the case of ***Bipin Shantilal Panchal vs. The State of Gujarat*** reported in **(2001) 3 SCC 1** cannot be followed as it was suggested only for the speedy disposal of the criminal trials. He further submits that the said distinction has been made by the learned Single Judge of this Court in the case of ***Gyanti Devi Si & Ors. vs. Shanti Devi*** reported in **(2012) 3 CLT 404**.

Mr. Prasanta Bishal, learned advocate appearing on behalf of the defendant no.9/opposite party no.7 herein submits that proof of four documents are pending, out of which two documents are the land records of the suit property marked as X and X-I for identification. The plaintiffs are questioning the admissibility of those documents on the ground that they are not certified copies of the original but certified copies of the certified copy however the said objection is not available to the plaintiffs now as his client subsequently has obtained certified copy of the said land records from the concerned settlement office and intends to prove the said documents in accordance with law.

Heard learned advocate for the parties, perused the materials-on-record.

The four documents marked X, X-1, Y and Y-1 for identification are the record of rights of the suit property, certificate issued by the Pradhan and certified copy of one deed.

The defendant no. 9 is seeking recall of D.W.₁; while allowing his such prayer, any observation regarding admissibility of the documents sought to be proved through the said witness is not warranted, those documents are required to be proved by the said witness in accordance with law.

In view of the aforesaid, D.W.₁ may be recalled to prove the aforesaid documents in accordance with law and the learned Trial Judge upon being satisfied regarding the admissibility, shall mark those documents as exhibits.

C.O. 2054 of 2018 is disposed of with the above observations without any order for costs.

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

(Biswajit Basu, J.)