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30.07.2021
TN

CO No.2770 of 2019

Sri Swadesh Ranjan Giri
Vs.
Sri Sahadeb Das and others

Mr. Soumen Dutta

.... for the petitioner

Mr. Amit Baran Dash

.... for the opposite party nos.1 to 3

It is submitted by learned counsel appearing for the petitioner that, despite the attempt to serve on the opposite party nos.4 and 5 pursuant to a previous direction of a co-ordinate Bench, the affidavit-of-service has been misplaced.

However, it appears from the cause-title of the revisional application itself, as well as the records, that the opposite party nos.4 and 5 were co-defendants with the petitioner in the suit from which the revisional application arises.

As such, further service on the opposite party nos.4 and 5 is dispensed with. The matter is taken up for hearing, since both the defendant/petitioner and

the plaintiffs/opposite party nos.1 to 3 are represented through counsel.

The grievance of the petitioner in the present revisional application is against an order, whereby the petitioner's application for stay of a partition suit, on the ground of pendency of the petitioner's suit for specific performance, under Section 10 of the Code of Civil Procedure (for brevity "the Code"), was refused.

Learned counsel for the petitioner contends that, in view of the petitioner having a right in the suit property, it is appropriate for the partition suit to be stayed till disposal of the suit for specific performance, since the issues involved in the two suits are more or less the same.

Learned counsel appearing for the plaintiffs/opposite party nos.1 to 3 controverts such submissions and argues that the trial court was justified in passing the impugned order in view of the reasons given in the impugned order itself.

It is seen from the impugned order that the same was written in excellent manner. The trial court took into consideration all relevant factors, including the fact that the issues in a suit for specific performance cannot be same as the issues involved in a partition suit, sufficient to attract the rigours of Section 10 of the Code.

That apart, the court below was justified in arriving at the finding that the defendant filed a petition at the stage of arguments of the suit, only to restrain the plaintiffs and harassing the plaintiffs to proceed with the suit though the defendant was wilfully causing delay in proceeding with the suit. The trial court further held that the agreement for sale is unregistered and the procedure regarding impounding the document has not been completed by deposit of requisite fees.

In such view of the matter, the trial court was fully justified in passing the impugned order.

The present revisional application, as well as the application for stay, filed by the petitioner in the court below are harassing in nature.

As a token of deprecation of the attempt of the petitioner to unnecessarily stall the suit by filing the present revisional application, keeping in balance the fact that the petitioner is a cultivator by occupation, a token cost of Re.1/- is imposed on the petitioner which shall be paid by the petitioner to the opposite parties within two weeks from date.

CO No.2770 of 2019 is dismissed on contest, thereby affirming the impugned order, bearing Order No.60 dated August 3, 2019 passed by the Civil Judge

(Senior Division), First Court at Contai, District: Puba Medinipur in Title Suit No.311 of 2014.

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.)