

(28)
04.02.2021
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)

CO 1558 of 2020

Sri Manotosh Jana
-versus-
Smt. Mira Chakraborty

Mr. Saptangsu Basu,
Mr. Subrata Santra,
... for the petitioner.

Mr. Tanmoy Mukherjee, ... for the opposite party.

Affidavit of service filed on behalf of the petitioner in Court today be kept with the record.

This revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for recovery of possession. The said suit being Other Suit No. 29 of 2017 is pending before the Second Court of Learned Civil Judge (Senior Division), Contai District: Purba Medinipur.

One Sri Dipak Maiti has filed a suit being Title Suit no. 26 of 2017 pending before the 2nd Court of learned Civil Judge (Junior Division) at Contai, District : Purba Medinipur against the parties of the aforementioned Other Suit no. 29 of 2017 seeking inter alia a decree of declaration of his title in respect of the properties involved in the said Other Suit no. 29 of 2017.

The opposite party by filing an application under Section 151 of the Code of Civil Procedure in the said Other Suit no. 29 of 2017 prayed for stay of all further proceedings of

the said suit till the disposal of the said Title Suit no. 26 of 2017.

The learned Trial Judge by the order impugned being Order no. 29 dated March 03, 2020 has allowed the said prayer of the opposite party in exercise of the power under Section 10 of the Code on the ground that till the ownership of the petitioner is determined in the said Title Suit no. 26 of 2017, the Other Suit no. 29 of 2017 being instituted later cannot be proceeded with.

Mr. Saptangsu Basu, learned Senior advocate appearing on behalf of the petitioner draws my attention to the judgment and decree dated March 31, 2014 passed in Other Suit no 113 of 2012 by the second Court of learned Civil Judge (Junior Division) Contai, District: Purba Medinipur wherefrom it appears that the opposite party has been declared to be a tenant under the petitioner.

The suit property in the aforementioned two suits is common; that is the only similarity in the said two suits excepting that, the parties and issues to be determined in the said suits are different.

In order to attract of provision of Section 10 of the Code, it is necessary that the decision in the previously instituted suit must operate as *res judicata* in the subsequently instituted suit; mere similarity of the subject-matter of the two suits is not enough to bring one of the such two suits within the sweep of Section 10 of the Code.

The learned Trial Judge has failed to appreciate the said scope of the said provision of the Code.

That apart, the status of the opposite party in respect of the properties involved in the connected Other Suit No. 29 of 2017 has already been determined in the aforementioned Other Suit no 113 of 2012.

The order impugned, for the aforesaid reasons, is not sustainable and is accordingly set aside.

CO 1558 of 2020 is allowed. The application filed by the opposite party under Section 10 of the Code of Civil Procedure is dismissed.

No order as to costs.

The Learned Trial Judge is requested to expedite the disposal of the suit.

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

(Biswajit Basu, J.)