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Ct. 18
01.04.2022

C.O. No. 78 of 2022

**Sumita Chatterjee
Vs.
Subrata Chatterjee & Anr.**

Mrs. Manju Agarwal,
Mr. Bajrang Manot ... For the petitioner.

Mrs. Shohini Chakraborty,
Ms. Prajaaini Das ... For the opposite parties.

Mrs. Manju Agarwal, learned advocate for the petitioner files affidavit-of-service, which is taken on record.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in a suit for declaration that the compromise decree passed in Title Suit No. 169 of 1977 was obtained by practicing fraud upon Court and is directed against order dated December 10, 2021 passed by the 3rd Additional Court of learned Civil Judge, (Junior Division) at Alipore, District – 24 Parganas (South) in Title Suit No. 56 of 2013 (previously Title Suit No. 3944 of 2008).

The learned Trial Judge by the order impugned has allowed the prayer of the petitioner for amendment of the plaint in part, i.e. the prayer of the petitioner to include a new prayer was allowed but incorporation of additional averments in support of the said prayer has been disallowed

on the ground that such averments are already in the plaint.

The prayer which has been allowed to be incorporated in the plaint is thus:

“(ia) A decree for declaration that the Plaintiff was a minor when the Title Suit No. 169 of 1977 was filed in the Learned 3rd Court of Subordinate Judge at Alipore as well as at the time of filing compromise petition in the said suit and also at the time of hearing of the said compromise petition.”

In the suit an issue has been framed that whether the plaintiff was a minor at the time of said compromise decree in the said suit was passed.

In view of framing of such an issue, the incorporation of the abovementioned prayer in the suit is completely unnecessary. The order impugned is therefore set aside.

The learned Trial Judge is requested to expedite the disposal of the suit as expeditiously as possible, preferably within one available effective working month of his Court from the date of communication of this order and in doing so shall not grant unnecessary adjournment to either of the parties.

The learned Trial Judge shall decide the issue of the maintainability of the said suit and while deciding the said issue, shall consider the judgment of the Hon’ble Supreme Court dated February 09, 2022 in the case of ***M/s. Sree Surya Developers and Promoters vs. N. Sailesh Prasad and Ors***

passed in **Civil Appeal No. 439 of 2022** along with the case of *M/s. Raja Pushpa Properties Pvt. Ltd. vs. N. Sailesh Prasad and Ors.* passed in **Civil Appeal No. 440 & 441 of 2022.**

C.O. 78 of 2022 is allowed with the above terms without any order as to 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.)