

27.04.2022
SL No. 17
Court No. 21
Sk & ali

C.O. No. 249 of 2022

Archana Sarkar

Vs

Ranjan Banerjee & Anr.

Mr. Satyam Mukherjee,

Ms. Sayani Ahmed

.....For the Petitioner

Mr. Sukanta Chakraborty

Mr. Anindya Halder

...For the opposite party No.1.

Parties are represented by their respective lawyers.

The petitioner files affidavit of service alongwith postal receipt and track report. The track report shows no delivery could be effected upon the opposite party as the door of the addressee was found locked. However, the opposite party is represented by Mr. Sukanta Chakraborty and Mr. Anindya Halder today.

The application under Section 24 CPC is taken up for hearing.

The decree holder of Title Suit No. 299 of 2010 has filed the present application under Section 24 CPC and prays for transfer of the Execution Case No. 5 of 2018 alongwith a Misc. Case No. 3 of 2021 under Section 47 CPC at present pending in the Court of Civil Judge, Senior Division at Kakdwip, 24-Parganas (South) to any competent Court of Civil Judge, Senior Division at Sealdah 24-Parganas (South).

She has prayed for transfer primarily on the ground that she is aged about 60 years and a widow without independent source of income and on the ground of long distance between her place of residence at Barasat to Kakdwip Court.

She has alleged that there is no direct train link between Barasat to Kakdwip. She has to take a break journey and which will take more than 5 (Five) hours otherwise she has to hire a rental car from Barasat to Kakdwip Court which will take about 4(Four) hours. It would be a financial hardship on her part to attend Kakdwip Court all the way from Barasat.

On the other hand, learned lawyer for the opposite party submits that the present dispute is in respect of a property measuring 94 decimal land situated at Dag Nos. 83/620, 84/621, 86 and 87 appertaining to Sabek Khatian No. 42 & 44 and Haal Khatian No. 108, situated at Mouza-Lakshimpur Abad, under J.L. No.71 under Police Station-Namkhana in the District of 24-Parganas (South).

The petitioner as a plaintiff has filed Title Suit No. 299/2010 for specific performance of contract in respect of above property in the court of Civil Judge (Senior Division) at Diamond Harbour against the opposite party no.2, perhaps at the time there was no Court of Civil Judge, Senior Division at Kakdwip Sub-

division. Kakdwip sub division was established in the year 2005 only with two Courts i.e. the Court of Civil Judge, (Junior Division) and the Court of Sub-divisional Judicial Magistrate. After 2015 the other 5 (five) Courts have come into an existence including the court of Civil Judge (Senior Division).

However, it is seen that the Title Suit No. 299 of 2010 was not transferred to the Court of Civil Judge (Senior Division) at Kakdwip after its creation sometime after 2015 and as such the said case was disposed of and decreed by Civil Judge (Senior Division) at Diamond Harbour on 11.05.2017 and decree was drawn up on 25.05.2017.

Subsequently, in view of the order No. 648 dated 05.09.2017 passed by the learned District Judge, Alipore, the Title Execution Case No. 15 of 2017 arising out of the decree dated 25.05.2017 passed in Title Suit No. 299 of 2010 was transferred to the Court of learned Civil Judge (Senior Division) at Kakdwip for disposal along with the entire record of the execution proceeding on 18.04.2018.

Now, by filing the present application under Section 24 CPC, the plaintiff/decreed holder wants the execution case to be transferred to the Court of Civil Judge, Senior Division at Sealdah.

For the sake of argument, even if the Execution Case is transferred to the Court of Civil Judge (Senior

Division) at Sealdah, then the property in question being located at Namkhana within the jurisdiction of Kakdwip Court, then the Civil Judge (Senior Division), Sealdah will not be able to execute the decree as it will not be feasible on his part or on the part of his office to execute the decree in respect of property situated outside his jurisdiction. Ultimately, the learned Civil Judge (Senior Division) Sealdah has to send the decree for execution to the Court of Civil Judge (Senior Division) at Kakdwip under whose jurisdiction the property is located.

For instance the award passed by Arbitral Tribunal is generally executed by the Civil Court within whose jurisdiction the decreetal property or the property liable to be attached for the satisfaction of the award is located. In such cases award is not executed by the Court within whose jurisdiction the award was passed, rather award will be executed by the Court within whose jurisdiction the property liable to be attached for satisfaction of the award is situated. But such is not the situation in the present case.

The learned lawyer for the petitioner referred to Hakim Mohammed Ali versus Bhanwari Bai passed by Hon'ble High Court of Rajasthan and Kishori Lal (Applicant) V. Balkishan passed by Hon'ble High Court of Delhi in support of his contention.

I find facts and circumstances of those decisions entirely different to the facts and circumstances of the present case.

In view of discussion made above, the application of the petitioner is not maintainable being misconceived and rejected.

Accordingly, **C.O. 249 of 2022** is dismissed. Connected application (if any) stands disposed of.

The interim order, if any stands discharged.

There shall be no order as to costs.

Parties are to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(Kesang Doma Bhutia, J.)