

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. No. 315 of 2019

Haripada Santra & Ors.

Vs.

Madan Santra & Ors.

(Via Video Conference)

For the petitioners:

Mr. Angshuman Chakraborty,
Mr. Shivaji Mitra

Heard on:

03.02.2022

Judgment on:

17.02.2022

Ajoy Kumar Mukherjee, J.

1. Feeling aggrieved and dissatisfied with the order No. 52, dated November 14th, 2018, rejecting the prayer for stay, passed by the Learned Civil Judge (Junior Division), 1st Court, Serampore, Hooghly in Title Suit No. 4629 of 2014, present revisional application has been preferred under Article 227 of the constitution of India.

2. Petitioners' case in a nutshell is that late Pratap Chandra Santra, grandfather of the petitioners, was the owner of different plots of land situated in Mouza-ugardaha, Hooghly. Said Pratap Chandra Santra died leaving behind three sons, namely Bijoy Santra , Nayan Santra and Sudhir Santra, who became the owner of the properties left by Pratap Chandra Santra in equal share. Subsequently aforesaid three sons of Pratap Chandra Santra died leaving behind their respective legal heirs. The petitioners herein are the legal heirs of aforesaid late Sudhir Chandra Santra, son of Late Pratap Chandra Santra and they along with their sisters became joint owners of 1/3 share of the properties left by deceased Sudhir Chandra Santra. Subsequently daughters of late Sudhir Chandra Santra transferred their share in favour of the petitioners No. 1 and 2 herein and furthermore they also purchased undivided share /portion of some of the co-sharers of the aforesaid property. As the petitioners herein were facing difficulties in enjoying their portion /share of the property , they filed suit for partition being Title Suit No. 151/2011 before the learned Civil Judge (Senior Division), 2nd Court, Hooghly which was subsequently transferred to the court of Learned Civil Judge (Senior Division), Serampore, Hooghly and re-numbered as Title Suit No. 798/2014 (hereinafter called as T.S. No. 798/2014).

3. During the pendency of the said suit for partition the opposite parties herein i.e. some of the defendants of said partition suit being T.S. No.798/2014, filed a suit being Title Suit No. 4629 of 2014 before the learned Civil Judge (Junior Division) 1st Court, Serampore, Hooghly, praying for

declaration of their title and permanent injunction, in respect of some of the joint properties involved in the said partition suit. Petitioners herein were impleaded as defendants in the aforesaid later Title Suit No. 4629/2014.

4. Be it mentioned that the suit property in connection with previously instituted partition suit being T.S. No. 798/2014 is comprising of R.S plot No. 77,78,79,81,55,96,97 and 98 in ugardaha Mouza ,Hooghly and the suit property of the said subsequently instituted T.S. No. 4629/2014 praying for declaration of title and injunction, comprising of R.S. plot No. 77,82,80,78,79 and 81 of the said Mouza.

5. Accordingly present petitioners as defendant in T.S. No.4629 of 2014 filed an application under section 10 read with section 151 of the Code of Civil Procedure (hereinafter called as C.P.C.) praying for stay of all further proceedings of said subsequently instituted suit being Title Suit No. 4629/2014, till the disposal of the above mentioned previously instituted partition suit filed by the petitioners herein, being T.S. No. 798/2014. The opposite parties herein as plaintiffs in said Title Suit No. 4629/2014, filed their written objection against petitioners' said application under section 10 read with section 151 of C.P.C. Learned Trial Court after hearing both the parties was pleased to reject the petitioners/defendants' prayer for stay of subsequently instituted Title Suit No. 4629/2014, by passing impugned order No. 52 dated 14.11.2018.

6. Being aggrieved and dissatisfied with the aforesaid impugned order dated 14.11.2018 petitioners herein preferred the present revisional application interalia on the grounds:-

(a) Matter in issue i.e. some of the suit properties in both the suits are common but the learned court below acted illegally and with material irregularity in exercise of its jurisdiction, in rejecting the petitioners' application under section 10, in as much as the decision in the previously instituted partition suit would have the effect of being res judicata in respect of the issue arising in the subsequently instituted suit for title, being T.S. No. 4629/2014.

(b) Learned Trial Court has made patent illegality in rejecting the petitioners application on the ground that some properties involved in the subsequently instituted suit are not the subject matter of the previously instituted partition suit. Learned Trial Court overlooked that PW1 in Title Suit No.4629/2014, admitted that the property in respect of the R.S. plot No. 80 and 82 which are the subject matter of the suit are joint properties of the parties and no partition thereof has been effected in writing, in compliance with section 14 of the West Bengal Land Reforms Act 1955.

7. From annexure 'A' i.e. copy of plaint in connection with the T.S. 798/2014, it appears that the properties involved in the said suit for partition comprises of R.S. plot No. 77,78,79,81,55,96,97,98 of Mouza ugrdaha, Hooghly. It further appears that the suit properties in which opposite parties herein prayed for declaration and permanent injunction being Title Suit No.

4629/2014 comprising of R.S. plot No. 77,82,80,78,79,81, under the self same Mouza. It further appears that PW1 namely Binod Santra who is plaintiff No. 3 in subsequently instituted Title Suit No. 4629 of 2014 and also defendant No.5 in the previously instituted partition suit being T.S. No. 798/2014, has stated in his cross examination on 03.01.2017 that Bijoy , Nayan and Sudhir Santra who are brothers, had acquired the property contained in dag No. RS 77/LR 86 measuring 109 Satak by way of inheritance . Said PW1 further admitted that no written document of partition has been executed in between the present co-sharers of R.S. plot No. 77/ LR plot No. 86 measuring 109 satak. Said PW1 also admitted no written partition was effected in between the co-sharers of dag No. 82 and 80 in respect of the said Mouza. Be it also mentioned that plaintiff No. 1, 2 and 3 of Title Suit No. 4629 of 2014 are figured as defendant No.1, 2 and 5 of the said previously instituted partition suit being T.S. No. 798/2014. It is also interesting to note that though some of the parties and some of the properties are common in both the aforesaid suits but surprisingly plaintiffs of Title Suit No.4629 of 2014 have not disclosed in their plaint that a partition suit in respect of some of the properties between some of the parties are pending before the learned Civil Judge (Senior Division), Serampore , Hooghly though PW1 admitted in cross examination that he is contesting the said partition suit.

8. Learned Trial Court while rejecting the petitioners prayer for stay of subsequent suit filed under section 10 of the C.P.C., was pleased to observe

“The perusal of the plaint of this instant suit shows that the suit property consists of R.S. plot no. 77/L.R 86, R.S. plot no. 82/ L.R. 91, RS 80/ L.R 89, R.S 78/LR 87, R.S. 79/ L.R.88, R.S. 81 / L.R. 90. The further perusal of the photocopy of the

plaint in TS. 798/2011 shows that such suit is related to RS. Plot No. 77,78,79,81,55,96, 97, 98. This shows that the partition suit is in respect of undivided property which includes some of the plots of suit property of this instant suit but not the entire suit property. The admitted position is that a partition suit is pending between the defendants and plaintiffs no. 1 to 3 of this suit and some of the properties are also same in both the suits. But in the instant suit, the plaintiffs have also prayed for relief in respect of some other properties which are not the subject matter of the partition suit. Now, though a partition suit is pending between the defendants and some of the plaintiffs in respect of some of the suit properties of this suit, yet there are other properties over which the plaintiffs have prayed for relief in the instant suit. If at this stage, this instant suit is stayed merely because a partition suit is pending between the defendants and some of the plaintiffs in respect of some of the properties of this unit, then the plaintiffs would be left with no relief, if any in respect of other properties which are also the suit properties of this suit and are not included in the suit properties of the partition suit. In such case, the plaintiffs are likely to be prejudiced if this suit is stayed till the disposal of the partition suit. Considering all these, I am not inclined to allow the prayer of the defendants."

9. From the prayer portion of Title Suit No. 4629/2014, it appears that plaintiff/opposite party herein have prayed for declaration that plaintiff No. 1, 3 and 4 are the owners and possessor of 'A-2', 'B', 'C-1', 'D', 'E' and 'F' schedule property and also for declaration that plaintiff No. 2 is the owner and possessor of 'A-1' and 'C-2' schedule and also for declaration that defendants(petitioners herein) have no rights title interest and possession in 'A', 'B', 'C', 'D', 'E', 'F' of the schedule properties. Be it again mentioned that plaintiff No. 1, 2 and 3 who have prayed for aforesaid declaration in Title Suit No. 4629/2014 in respect of the aforesaid 'A' to 'F' schedule, are defendant No. 1, 2 and 5 in the aforesaid T.S. No. 798/2014 and defendants of said Title Suit No. 4629 of 2014 in respect of which plaintiffs of that suit prayed for declaration that defendants

have no right title interest in 'A' to 'F' schedule, are the plaintiffs of aforesaid earlier T.S. No. 798/2014. I have already noted that aforesaid 'A' to 'F' schedule of subsequently instituted Title Suit No. 4629/2014, comprising inter alia R.S. Plot No. 77,78,79 & 81 are also subject matter of aforesaid previously instituted partition suit and it is also admitted by PW1 in Title Suit No. 4629 /2014, that some of the properties in said two suits were never partitioned, complying section 14 of West Bengal Land Reforms Act 1955.

10. Learned Trial Court has overlooked the fact that there is serious chance of contradictory verdict in respect of some of the suit plots unless hearing of both the suits are consolidated. Settled principle of law is that it is not necessary that all the questions or issues that arise should be common to both actions, before a joint trial can be ordered. It will be sufficient if some of the issues are common and some of the evidence to be let in is also common, especially when the two actions arise out of the same transaction or series of transactions. There is no warranting for curtailing the power of the court to order joint trial by introducing a restriction to the effect that a joint trial can be ordered only if there was consent by both sides. Decision of a court in respect of the joint trial depends upon the convenience of trial, saving of time and expenses and the avoidance of duplicating at least a part of the evidence leading to saving of time and money **(2007 (1) SCC 97).**

11. In view of above I think justice would be done to both the parties if, learned Trial Court is directed for joint trial of Title Suit No. 151/2011 (re-numbered as 798/2014) with Title Suit No. 4629 / 2014 to avoid multiplicity of

judicial decisions in respect of some of the plots involved in both the suits. Accordingly Title Suit No. 4629/2014 pending before learned Civil Judge (Junior Division) 1st Court, Serampore, Hooghly is hereby withdrawn from its file and transferred to the court of Civil Judge (Senior Division), Serampore, Hooghly and Learned Civil Judge (Senior Division), Serampore, Hooghly is directed to make joint trial of aforesaid Title Suit No. 151/2011 (re-numbered as 798/2014) with T.S. 4629 of 2019 and to proceed with both the suits from the point at which it was transferred and/or withdrawn. Impugned order No. 52 dated 14.11.2018, passed by the Learned Civil Judge (Junior Division), 1st Court, Serampore, Hooghly, is accordingly set aside.

12. C.O. No. 315/2019 is allowed .

There will be no order as to costs .

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

Let the copy of the order be sent to the Learned Civil Judge (Junior Division), 1st Court, Serampore, Hooghly and also to the learned Civil Judge (Senior Division), Serampore, Hooghly.

(AJAY KUMAR MUKHERJEE, J.)