

20.12.2022
173
Ct. no. 652
sb

C.O. 457 of 2020

Tapas Chakraborty
Vs.
Matin Sardar

Mr. Haradhan Banerjee
Mr. Sounak Bhattacharya
Mr. Manas Kumar Sadhu ...for the Petitioner

Affidavit of service filed by the petitioner, is taken on record. In spite of service, the opposite party is not represented.

Challenging the order no. 25 dated 2nd April, 2019 passed by the learned Civil Judge (Senior Division), Basirhat, North 24 parganas in Title suit no. 89 of 2015, present application under Section 227 of the Constitution of India has been preferred.

The petitioner contended that the opposite party filed a suit for declaration, partition and injunction against the present petitioner. In the said suit, the defendant filed an application under Section 10 of the Code of Civil Procedure praying for stay of the aforesaid suit till disposal of the former probate proceeding on the ground that the land of the suit plot being no. 921 as well as the land of other plots of said title suit no. 89 of 2015 is also subject matter of aforesaid probate proceeding. Said property was owned and possessed by

one Sushila Bala Devi, the predecessor in interest of the petitioner. In that context, he further contended that said Sushila Bala Devi executed a will on 7th December, 2004 in favour of the petitioner in respect of the property including the property mentioned in the aforesaid partition suit. The petitioner initiated probate case being no. 10 of 2014 (which after getting contentions renumbered as OS47 of 2018 and subsequently again on transfer renumbered as OS3 of 2019) which is now pending before learned Additional District Judge, North 24 parganas, Barshirhat in connection with the said will for decision. The said Sushila Bala Devi died on 25th November, 2005 but the relatives of said Sushila Bala Devi ignoring existence of Sushila's will transferred the property involved in the aforesaid probate suit to the plaintiff. The will being executed in connection with the self-same property and is a former transaction and the transfer made by her legal heirs in respect of self-same property is a subsequent transaction. He further submits when probate proceedings became contentious, it gets the character of a suit. Accordingly, the petitioner contended that the probate proceeding should be disposed of before the disposal of the partition suit, otherwise there might be multiplicity of judicial proceedings.

Having considered the facts and circumstances of the case and that the probate proceeding is an earlier

one and that the property involved in the probate proceeding is also involved in the partition suit, I find that the learned court below was not justified in rejecting the petitioner's prayer for granting stay under Section 10 of the Code of Civil Procedure solely on the ground that parties in both the suits are not same or that relief claimed in the two suits are different. The object of Section 10 of the Code is to prevent courts from simultaneously trying two parallel suits in respect of the same matter in issue, to avoid two parallel trials on the same issue by two courts and to avoid conflicting judicial decisions on issue which are directly and substantially in issue in the previously initiated suit. Here subject matter of subsequently instituted suit for declaration and partition is directly in issue in the probate proceeding. It is also well settled that proceeding when becomes contentions the proceeding shall take as nearly as may be the form of a suit (Phanindra Chandra Vs. Nagendra Chandra & Others, AIR 1925 Cal 75). Accordingly in the present case, Section 10 of the Code attracted as decision in previous suit will operate as resjudicata in subsequent suit.

In view of above, the impugned order dated 2.4.2019 passed in Title suit no. 89 of 2015 is set aside. All further proceedings of Title suit no. 89 of 2015 are stayed till disposal of the original suit no. 03 of 2019

pending before the learned Additional District Judge, Basirhat, North 24 parganas.

learned Additional District Judge, Basirhat, North 24 parganas is requested to make every endeavour for expeditious disposal of the said original suit no. 03 of 2019 and he is further requested to conclude the entire proceeding of original suit no. 03 of 2019 preferably within a period of eight months from the date of communication of the order.

Accordingly, C.O. 457 of 2020 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)