

(04)
10.02.2022
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

**(Via Video Conference)
CO No. 621 of 2019**

**Smt. Nisha Sahu
-versus-
Ram Krishna Chandra & ors.**

Mr. Arup Krishna Das,
Mr. Sanjoy Ghosh,
... for the petitioner.

Mr. Arup Krishna Das, learned advocate for the petitioner, files affidavit of service which is taken on record.

None appears on behalf of the opposite parties in spite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration of title and injunction and is directed against the order no. 53 dated January 04, 2019 passed by the 2nd Court of learned Civil Judge (Junior Division) at Asansol, District : Paschim Burdwan in the said suit being Title Suit No. 107 of 2011.

The petitioner in the said suit filed an application under Order XXIII Rule 1 of the Code of Civil Procedure praying permission to withdraw the said suit and a liberty to file a fresh suit on the self-same subject-matter.

The petitioner is claiming title over the suit property on the basis of a registered deed of sale bearing no. 3960 of 2009. The petitioner sought withdrawal of the said suit inter alia on the grounds that in the plaint the consideration price for sale of the suit property has not been mentioned.

The petitioner was unsuccessful in amending the plaint to incorporate the said fact as his prayer for amendment of plaint was refused by the learned Trial Judge and was affirmed in revision by this Court.

Under such circumstances, the petitioner sought to withdraw the said suit with a liberty to file a fresh suit on the self-same subject-matter.

The learned Trial Judge by the order impugned although has allowed the prayer of the petitioner for withdrawal of the suit but refused to grant liberty to file a fresh suit on the self-same subject-matter.

Law is well settled that prayer for withdrawal of the suit on the ground of any formal defect or for any other sufficient grounds with a liberty to file fresh suit on the self-same subject-matter cannot be split up, either such prayer is to be allowed as a whole or is to be refused as a whole. (See **Smt. Archana Roy – versus- Dipanjan Bhattacharjee** reported in **AIR 2019 Cal 165.**)

The grounds on which the petitioner sought withdrawal of the said suit are sufficient to attract the provision of Order XXIII Rule 1(3).

Therefore, the learned Trial Judge is not justified in refusing the prayer of the plaintiff to file a fresh suit

on the self-same subject matter of the pending suit even after allowing her to withdraw the said suit.

The order impugned therefore suffers from material irregularity, as such, is set aside.

The application filed by the petitioner under Order XXIII Rule 1 is allowed.

The petitioner is granted liberty to withdraw the said suit with a liberty to file afresh on the self-same subject-matter.

CO 621 of 2019 is thus allowed without any order as to costs.

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

(Biswajit Basu, J.)