

S/L 275
14.3.2023
Court No.652
SD

CO 638 of 2023

Sri Sanjoy Pramanik
Vs.
Smt. Purabi Biswas & Ors.

Ms. Krishnakali Swar

...for the Petitioner.

This is an application under Article 227 of the Constitution of India read with Section 24 of the Code of Civil Procedure seeking transfer of Title Suit No.104 of 2019 from the Court of learned Civil Judge (Senior Division), Sealdah to the Court of learned Fast Track First Court, Sealdah for analogous hearing.

It is submitted on behalf of the petitioner that the petitioner had instituted a probate case being No.73 of 2017 for grant of probate of last will of testament of Prodyut Kumar Pramanik, since deceased. The opposite party nos.1, 3, 4, 5, 6 and 8 appeared therein by filing vakalatnama and also filed written statement and as such, the said Probate Case No.73 of 2017 was renumbered as O.S. 11 of 2019. Subsequently, it was transferred to the court of learned Additional District Judge, First Court, Sealdah and it was renumbered as O.S. 6 of 2019.

During pendency of the said O.S. 11 of 2019, all of a sudden, the opposite parties suppressing the material facts, have filed aforesaid suit for partition of selfsame property being Title Suit No.104 of 2019 against the petitioner herein

as defendant no.1 therein. They have also filed an application for temporary injunction in the said suit.

In view of the above, the petitioner has sought for transfer of the Title Suit No.104 of 2019 pending before the learned Civil Judge (Senior Division), Sealdah to the Court of learned Additional District Judge, Fast Track, First Court, Sealdah for analogous trial.

Since the prayer made is very innocuous and both the suits are required to be heard by the same court in order to avoid conflict of judicial decisions, the service of copy of the revisional application upon the opposite parties is dispensed with.

Considering the facts and circumstances of the case and that if the said two proceedings are not heard together by the same court, there is every possibility of conflicting judicial decisions in respect of selfsame subject matter, the prayer made by the petitioner is allowed, in order to avoid miscarriage of justice.

Accordingly, learned District Judge, South 24 Parganas at Alipore is hereby directed to withdraw the Title Suit No.104 of 2019 from the Court of learned Civil Judge (Senior Division), Sealdah at Alipore and to transmit the case record within a period of three weeks from the date of communication of the order to the Court of learned Fast Track, First Court, Sealdah for trial.

The transferee court shall give fresh notice intimating the next date of hearing upon both the parties before taking up further proceeding of the suit.

Department is directed to send a copy of this order to the learned District Judge, South 24 Parganas at Alipore immediately.

With these observations, C.O. 638 of 2023 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)