

(03)
01.04.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 840 of 2020

Sri Madhusudan Sahoo (since deceased)
Sri Gopal Chandra Sahoo & ors.

-versus-

Smt. Nuna @ Menoka Shit & ors.

Mr. Tanmoy Mukherjee,
Mr. Kamal Mishra,
Mr. Souvik Das,
Mr. Rudranil Das, ... for the petitioners.

Mr. Amit Baran Dash, ... for the O.P nos. 2 & 3.

The revisional application although has appeared in the list for extension of interim order but by the consent of the learned advocate for the parties, the matter is taken up for final disposal.

The plaintiffs in a suit for declaration of title and injunction are the petitioners of the present application under Article 227 of the Constitution of India which is directed against Order No. 123 dated February 10, 2020 passed by the learned Civil Judge (Junior Division) 1st Additional Court at Contai, District- Purba Medinipore in the said suit being Title Suit No. 67 of 2015.

The petitioners in the said suit are praying, inter alia, for a decree of declaration of their right, title and interest over the suit property.

The plaintiffs are tracing their such right, title and interest over the suit property on the basis of the deeds allegedly executed by the mother of the contesting defendants/opposite party nos. 2, 3 and 4.

The mother of the said opposite parties has been arrayed as defendant no. 1 in the suit but she has not appeared in the suit, as such the suit is proceeding ex-parte against her.

The contesting defendants have specifically challenged the genuineness of the title deeds of the petitioners on the ground that those deeds were never executed by their mother.

The plaintiffs to eliminate the said challenge of the contesting defendants on an earlier occasion prayed for appointment of an expert to compare the LTI of the vendor of their title deeds with the LTI of the vendor of another deed which the plaintiffs claimed was executed by the defendant No. 1. The contesting defendants disputed that the reference deed was executed by their mother, as a consequence, the said prayer of the plaintiffs was refused by the learned trial Judge for want of admitted LTI of the defendant no. 1 and the order refusing the said prayer of the plaintiffs was affirmed by this Court in revision.

The petitioners, almost at the fag end of the suit, filed an application for a direction upon the defendant no. 1 to appear before the learned Trial Judge for the purpose of collecting her LTI so that the said collected LTI can be compared with the LTI of the vendor appearing in the title deeds of the plaintiffs by an expert.

The learned Trial Judge by the order impugned has dismissed the said application on the ground that the suit has reached the stage of argument.

The learned advocate for the petitioners submits that the fate of the suit is dependent upon the answer to

the issue as to whether the title deeds of the plaintiffs were executed by the defendant no. 1 and the procedure suggested by the plaintiffs is in aid of proper adjudication of the said issue, as such, stage of the suit cannot be an absolute bar to resort to the said procedure.

Learned advocate for the opposite party nos. 2 and 3 strongly objects to the said submission of the learned advocate for the petitioners, and submits that the suit has reached to the stage of argument and in fact, the argument on behalf of his clients has already been concluded, only the argument on behalf of the plaintiffs is pending, as such, at this stage of the suit, the learned Trial Judge has rightly refused to entertain the said prayer of the plaintiffs.

Heard the learned advocate for the parties, perused the materials-on-record.

The defendant no. 1 is not contesting the suit, as such there is no denial on record by the said defendant regarding the claim of the plaintiffs that their title deeds were executed by her, the defence of the contesting defendants that their mother never executed the said deeds is not sufficient to substitute the requirement of the direct denial of the defendant no. 1 that she never executed the said deeds, particularly when she is still alive.

The anxiety of the plaintiffs to bring clinching evidence on record to bring home their case that the said deeds were executed by the defendant no. 1 drives them to resort to a procedure for appointment of an expert but the learned Trial Judge when from the

materials available on-record and from the conduct of the parties can deal with the said issue and answer it, appointment of an expert causing delay in disposal of the suit is not necessary.

Under such position of the records and by taking into consideration the conduct of the parties, the learned Trial Judge when can answer the said issue by applying the doctrine of adverse presumption, this Court does not find it necessary to interfere with the order impugned.

The learned Trial Judge is requested to dispose of the suit as expeditiously as possible in accordance with law by taking into consideration the observations made hereinabove.

C.O. 840 of 2020 is disposed of with the above terms without any order as to costs.

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

(Biswajit Basu, J.)