

S/L 83
23.9.2022
Court No.652
SD

CO 1223 of 2019

Sri Kalu Prosad Chowbey & Anr.
Vs.
Deity Sri Sri Iswar Raghunath Jew Thakur & Ors.

Ms. Adrisnata Chakraborty

...for the Petitioners.

Ms. Madhumita Patra

...for the Opposite Party No.3.

Being aggrieved and dissatisfied with the order no.15 dated March 7, 2019 passed by the learned District Judge, Hooghly at Chinsurah in Misc. Case No.19 of 2017 under Section 24 of the Code of Civil Procedure, the present revisional application has been preferred.

The petitioners have contended that the plaintiffs/opposite party nos.1, 2 and 3 filed the Title Suit No.182 of 2015 against the defendant nos.1 and 2, the petitioners herein and also against the opposite party nos.4 to 7 herein for declaration, eviction and permanent injunction before the Court of learned Civil Judge (Junior Division), 1st Court, Hooghly at Chinsurah.

The petitioners herein entered appearance in the said suit and filed written statement. During pendency of the aforesaid title suit, the petitioners filed an application under Section 24 of the Code of Civil Procedure before District Judge, Hooghly praying for transfer of aforesaid Title Suit No.182 of 2015 pending before the learned Civil Judge (Junior Division), 1st Court, Hooghly at Chinsurah to the

court of learned Civil Judge (Senior Division), Additional Court, Hooghly at Chinsurah. The said application for transfer was registered as Misc. Case No.19 of 2017.

The case made out in the said application under section 24 of the Code of Civil Procedure is that the opposite party nos.1, 2 and 3 being the plaintiffs have filed the suit for declaration, eviction and permanent injunction against the petitioners herein and also against the opposite party nos.4 to 7 herein, as defendants in Title Suit No.182 of 2015 pending before the learned Civil Judge (Junior Division), 1st Court, Hooghly. The opposite party no.3 herein being the sole plaintiff has also filed another suit being Title Suit No.255 of 2006 (renumbered as Title Suit No.127 of 2013) for declaration, partition, permanent injunction and alternatively for framing of scheme, against the petitioners herein as the defendants before the learned Civil Judge (Senior Division), Additional Court, Hooghly at Chinsurah being Title Suit No.127 of 2013.

It is further submitted that schedule of the property in question involved in both the suits are same and identical and the parties to both the suits are almost the same and as such, both the suits should be heard analogously. The opposite party no.5 and 6 herein filed written reply and also prayed for analogous trial, supporting the case made out by the petitioners. Similarly, the plaintiffs/opposite parties herein also filed their reply and supported the case made out by the petitioners and prayed for analogous trial. After

hearing, the learned District Judge has been pleased to dismiss the prayer for analogous trial of both the suits by passing the impugned order.

Petitioner further submits that the learned District Judge has acted illegally and material irregularity in exercising of his jurisdiction in rejecting the application by total non-application of mind, as it is a fit case for analogous trial as the suit property as well as the parties to the suit are same. Learned District Judge ought to have considered that since all the contesting parties have consented for analogous hearing, the misc. case of transfer should have been allowed. The learned District Judge acted illegally in rejecting the misc. case by holding that two suits have been filed in different points of time and status of both the suits are different.

Ms. Madhumita Patra, learned counsel appearing for the opposite party no.3 submits that she does not have any objection if the prayer for analogous trial of both the suits be made by a Court having competent to try both the suits.

Having considered the aforesaid facts and circumstances of the case and that as contended by the parties that the suit property involved in both the suits are same and parties are almost same and that the parties are also willing that both the suits should be heard analogously and also considering the fact that in such situation if the prayer for analogous trial be not allowed, there is serious

chance of multiplicity of judicial decisions over the selfsame dispute, the order impugned is hereby set aside.

Accordingly, the present revisional application being CO 1223 of 2019 is allowed.

The learned District Judge, Hooghly at Chinsurah is hereby directed to withdraw the Title Suit No.182 of 2015 pending before the court of learned Civil Judge (Junior Division), 1st Court, Hooghly and to transmit the same to the court of learned Civil Judge (Senior Division), Additional Court, Hooghly at Chinsurah, so that the said Title Suit No.182 of 2015 and Title Suit No.127 of 2013 be heard analogously.

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.)