

23.09.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O.1337 of 2022

Dipankar Bose & ors.
Vs.
Sri Kalinath Sasmal & anr.

Mr. Soumen Kr. Dutta,
Mr. Sabyasachi Bhattacharjee
...for the petitioners

Mr. Tanmoy Mukhejree,
Mr. Souvik Das,
Mr. K. Raihan Ahmed,
Mr. Rudranil Das
...for the opposite party no.1

Mr. Soumen Kumar Dutta, learned advocate appearing for the petitioners, while assailing the impugned order dated 29th April, 2022, submits that there is a probate proceeding relatable to the subject property involved in Title Suit No.130 of 2008, and determination of issue involved in the probate proceeding would have direct some relevance over the subject-matter of controversy raised, in Title Suit No.130 of 2008.

Admittedly, in Title Suit No.130 of 2008, a customary right for the purpose of celebration of Puja on the subject property has been sought to be enforced by suit for declaration and injunction.

Mr. Dutta further submits that in spite of furnishing knowledge about the existence of a probate proceeding relatable to the subject property involved in

the present litigation, the court below was not prepared to grant adjournment, and directed closure of the plaintiffs' evidence.

Such closure of the evidence, according to petitioners, is prejudicial to the interest of the plaintiffs, as there are other witnesses still left to be examined in this case, and without the examination of remaining witnesses, the controversy surfaced at the moment may not be unfold.

Per contra, Mr. Tanmoy Mukherjee, learned advocate appearing for the opposite party no.1 disputes with the submission advanced by Mr. Dutta replying that the probate proceedings is independent one, and taking the pendency of the probate proceeding, the instant suit may not be allowed to be proceeded endlessly, granting adjournment as proposed by the petitioners/plaintiffs.

Supporting the order of the court below, Mr. Mukherjee submits that there lies nothing to be interfered with.

However, Mr. Mukherjee submits that plaintiffs may be permitted to adduce their witnesses, but in the name of adducing evidence, the same should not be proceeded in an endless manner.

Having considered the submission of both sides, it appears that closure of the evidence of plaintiffs is only under challenge in this case.

In view of the submission disclosed by Mr. Mukherjee conceding to the further examination of witnesses, still left unexamined for and on behalf of the plaintiffs, there is hardly any scope for any further elaboration.

The revisional application stands disposed of upon setting aside the impugned order dated 29th April, 2022, with a direction upon the court below to examine rest of the witnesses, proposed to be examined by the plaintiffs, within three months after the reopening of Puja Vacation of the court below.

Petitioners are to produce the name and list of the witnesses, proposed to be examined for the purpose, so that the grievance of the petitioners is sufficiently remedied in the instant litigation.

Parties are directed to make communication of this order to the learned court below.

As it is disclosed by Mr. Mukherjee that suit has already been set for argument on subsequent dates, this would not, however, prevent the court below to collect evidence of further witnesses, to be examined by the plaintiffs within the time framed, so mentioned hereinabove, giving chance to opposite party no.1 for cross-examination, and further opportunity to defendants/opposite party no.1 to adduce further evidence, if any on behalf of defendants.

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

(Subhasis Dasgupta, J.)