

22.08.2022
Item No.9
Ct. No.7
CHC
(disposed of)

C.O.1861 of 2022

Sri Debashish Sreemany
Vs.
Sri Debdutta Sreemany & anr.

Mr. Arnab Roy,
Mr. Satyam Mukherjee,
Ms. Sayani Ahmed
...for the petitioner

Mr. Pinaki Dhole,
Mr. Z. Rehemman,
Mr. Debjit Bhattacharyya
...for the opposite parties

The subject-matter of challenge in this case is against the order dated 4th June, 2022, passed by learned Civil Judge (Senior Division), 4th Court, at Alipore, South 24 Parganas, in Title Suit No.392 of 2020, rejecting the prayer for stay under Section 151 C.P.C.

Mr. Arnab Roy, learned advocate appearing for the petitioner adverting to copy of the plaint of Title Suit No.694 of 2020, submits that petitioner/plaintiff filed a Title Suit No.694 of 2020 praying for declaration of his share in Partition Suit.

It is contended by the learned advocate for the petitioner that against the self-same plaintiff/petitioner

a separate suit has been instituted impleading petitioner/plaintiff as defendant in Title Suit No.392 of 2020 with a prayer for recovery of khas possession and *mesne profits*, and upon referring such facts Mr. Roy strenuously contends further that in the event of further movement of Title Suit No.392 of 2020, pending decision of Title Suit No.694 of 2020, the lawful right, title and interest of the petitioner, if there be any, may be seriously prejudiced.

It is thus submitted that if the petitioner succeeds in the Partition Suit being Title Suit No.694 of 2020, in that event, landlord/plaintiff may not be evicted in connection with Title Suit No.392 of 2020.

According to petitioner the court below has not gone into the point raised in the petition under Section 151 C.P.C., and has mechanically rejected the prayer under Section 151 C.P.C.

Per contra, Mr. Pinaki Dhole, learned advocate appearing for the opposite parties submits that the predecessor of the petitioner has already relinquished his right, title and interest in the subject property involved in the Partition Suit upon receiving some good sum, and as such, the petitioner has no tangible interest left in the suit property so as to establish his right of partition in respect of the suit property mentioned in the schedule to the plaint for partition.

Upon advertng to paragraph-‘3’ of application for stay of petitioner, filed in the court below, learned advocate for the opposite parties submits that the referred petition is essentially a petition under Section 10 of C.P.C. irrespective of nomenclature of the petition captioned in the referred petition.

Upon referring such facts, learned advocate for the opposite parties submits that instant petition is purely harassive and dilatory one, simply to frustrate the suit already instituted for recovery of khas possession and *mesne profits* instituted against the petitioner/defendant in Title Suit No.392 of 2020.

In reply, learned advocate for the petitioner submits that nomenclature of the petitioner or misquoting of section would hardly matter, and proposes for decision of the petition in context with the averments contained in the petition for stay.

Having considered the submission of both sides, it appears that a prayer for stay has been proposed by the petitioner, which has been rejected by the court below. According to the opposite parties, it is purely an application under Section 10 of the C.P.C.

As per submission disclosed by the petitioner, there is a direct relevance of decision, to be reached in Title Suit No.694 of 2020, over the fate of Title Suit No.392 of 2020.

Upon perusal of the impugned order, it appears that in context of the averments disclosed in paragraph-‘3’ of prayer for stay, the court below has not gone into the essentials, required to be looked into for a decision in application of Section 10 of the C.P.C. The fundamental test of provision under Section 10 C.P.C. is whether the final decision of previous suit would operate as a *res judicate* or not in a subsequent suit which is to be ascertained from the materials disclosed in the averments of petition proposing for stay together with other materials placed in the case record, and the written objection, if there be any, furnished by the opposite parties.

The essentials of Section 10 C.P.C. having not been appropriately adhered to by the court below in this case, the impugned order, as such is not sustainable.

That part of the impugned order dated 4th June, 2022 dealing with rejection of a prayer for stay is thus set aside, keeping other portions of the order unchanged, with a direction upon the court below to hear out the petition for stay afresh in context with the parameters disclosed in Section 10 of C.P.C. together with the averments disclosed, particularly in paragraph-‘3’ of the application for stay, within four (04) weeks from the date of communication of this order.

While endeavouring such exercise, an opportunity of hearing may be extended to both the parties.

Petitioner is directed to make communication of this order to the court below.

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.)