

26.04.2022  
(D/L-09)  
Ct.-18  
(Susanta)

C.O. 2490 of 2016

Smt. Swapna Paul  
-Vs-  
Sri Sanjib Mallick

Mr. Tapas Kumar Dey,  
.... For the Petitioner.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for specific performance of an agreement for sale of the suit property and is directed against the orders dated April 28, 2014, October 28, 2014 and February 2, 2015 passed by the 1<sup>st</sup> Court of learned Civil Judge (Senior Division), Barasat, District- 24 Parganas (North) in the said suit being Title Suit no. 342 of 2010.

The said agreement for sale was insufficiently stamped as such the learned Trial Judge by the orders impugned dated April 28, 2014 and October 28, 2014 has impounded it and sent the same to the concerned Collector for assessment of the stamp duty payable on the said instrument and by the order impugned dated February 2, 2015 has recorded receipt of the said assessment by the said Collector.

Mr. Tapas Kumar Dey, learned advocate for the petitioner submits that the alleged agreement

for sale is actually an agreement for loan transaction, the learned Trial Judge should have decided the nature of the said document before impounding it.

The document, specific performance of which the plaintiff is seeking in the suit is not sufficiently stamped. The nature of the document shall be decided in course of the trial of the suit which has no nexus with the assessment of actual stamp duty payable on the said document.

The document on payment of proper stamp duty becomes admissible but such payment *ipso facto* does not dispense with the requirement of proving it in accordance with law.

The orders impugned, therefore do not call for any interference, the revisional application being C.O. 2490 of 2016 is dismissed accordingly without any order as to costs.

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

(Biswajit Basu, J.)