

23.12.2022
7
Ct. no. 652
sb

C.O. 2767 of 2022

Smt. Juthika Chatterjee
Vs.
Sri Kanchan Mukherejee & Ors.

Ms. Shila Sarkar ...for the Petitioner

Mr. Uttiya Roy ...for the opposite party

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Title Suit no. 66 of 2017 presently pending before the court of learned Civil Judge (Junior Division), 2nd Court at Durgapur, Paschim Bardhaman to the court of learned Civil Judge (Junior Division), 4th Court, Purba Bardhaman.

The petitioner contended that the predecessor-in-interest of the opposite party nos. 1 and 2 filed a suit for declaration that the deed described in Ga schedule to the plaint is valid and also for declaration of right, title of the plaintiffs over the Ka schedule property excepting the property mentioned in Kha schedule and also for permanent injunction. Subsequently the petitioner herein also filed a suit against the opposite party no. 1 and 2 herein before the Civil Judge (Junior Division), 4th Court, Purba Burdwan bearing title suit no. 101 of 2018 praying for declaration that the deed mentioned in the schedule C in respect of schedule B property was

nothing but an outcome of fraud, undue influence and misrepresentation and is not binding upon the petitioner herein.

The petitioner submits that the suit properties in both the aforesaid suits are more or less the same and contesting parties are also same. The main dispute arises in the suits is out of the deed executed by the petitioner in favour of the predecessor-in-interest of the opposite party and the subsequent deed of cancellation of such deed executed by the petitioner. The petitioner submits that the petitioner is a widow and aged about 63 years and she is also suffering from various age related diseases. Both her daughters are married and live at their respective matrimonial houses. In view of above, it is extremely difficult for her to travel to Durgapur on every date of hearing particularly when evidence will be taken and moreover, the petitioner submits that for effective adjudication, both the suits should be tried together. Accordingly, the petitioner has sought for aforesaid transfer.

Learned counsel for the opposite party raises vehement objection and contended that the petitioner herein, in the meantime filed another partition suit being Title Suit no. 95 of 2018 before the court of learned Civil Judge (Senior Division) at Durgapur Paschim Bardhaman . Some of the properties involved in the said partition suit before the court at Durgapur are also the

subject matter of the suit, filed by the petitioner herein which is mentioned in the B schedule to the petitioner's aforesaid plaint of title suit no. 101 of 2018. He further submits that the suit filed by the opposite parties herein being T.S. 66 of 2017 before Durgapur Court is earlier suit and such earlier suit must not be transferred for whatever reason. He further submits that the grounds for transfer as mentioned in her petition, is not sufficient to pass the order of transfer in favour of the petitioner.

I have considered the submissions made by both the parties, it appears that in connection with right over some of the properties which are common three suits are pending. The opposite parties herein, first filed Title suit no. 66 of 2017 before the learned Civil Judge (Junior Division) 2nd Court, Durgapur for declaration of his right, title and interest over plot no. 694 and 694/1437 within Golsi Police Station and plot no. 922 and 920/4043 within Budbud Police Station, Purba Bardhaman, by dint of deed executed in their favour. The petitioner herein filed second suit being title suit no. 101 of 2018 in the court of Purba Burdwan for declaration that the deed in favour of the opposite parties are not genuine and as such the opposite parties have not acquired any right, title and interest either in plot no. 694 and 694/1437 or plot no. 922 and 920/4043. In the said suit also, the plot no. 694 and 694/1437 are involved. In the third suit filed by present

petitioner before the court of learned Civil Judge (Sr. Div.) at Durgapur, Paschim Bardhaman is a suit for partition being T.S. 95/2018 and in the said suit aforesaid plot nos. 992,920/4043, 694/1437 are also involved as appearing in the schedule of plaint.

From the aforesaid description, it is clear that some of the plots are common in respect of the aforesaid three suits out of which one is initiated by the petitioner herein and pending in the court of Purba Burdwan and out of other two suits which are pending in the Durgapur court, one has been initiated by the opposite party herein which is earliest suit and the another one i.e. the partition suit which is latest one, has been filed by the petitioner herein. Admittedly, the suit filed by the opposite parties being Title suit no. 66 of 2017 which is pending in the court of learned Civil Judge (Junior Division), 2nd Court at Durgapur is the earliest suit. It is also not in dispute that in order to adjudicate real controversy between the parties as to whether the opposite parties have acquired any right, title and interest in the said properties or not and whether the petitioner herein is entitled to get a decree for partition or not should be heard analogously in order to avoid conflict of judicial decisions.

Since the petitioner has already filed a partition suit before the learned Civil Judge (Junior Division), 2nd Court at Durgapur where she would be required to

present and that admittedly for effective and conclusive adjudication of controversy between the parties, all the three suits are required to be heard by the same court as dispute over right title interest over some of the properties in the said three suits are common and that in order to avoid conflict of judicial decisions over self same issue, the learned District Judge, Purba Bardhaman is directed to withdraw the Title suit no. 101 of 2018 from the court of learned Civil Judge (Junior Division), 4th Court at Purba Bardhaman and to transmit the same to the court of learned Civil Judge (Senior Division), at Durgapur for disposal, where T.S. 95/2018 filed by petitioner herein is pending.

Learned District Judge, Paschim Bardhaman at Asansol is also directed to withdraw the Title suit no. 66 of 2017 from the court of learned Civil Judge (Junior Division), 2nd Court at Durgapur to the court of learned Civil Judge (Senior Division), At Durgapur and learned Civil Judge (Senior Division) at Durgapur, Paschim Bardhaman is directed to hear all the three suits analogously being Title suit no. 66 of 2017, Title suit no. 95 of 2018 and Title suit no. 101 of 2018.

Accordingly, C.O. 2767 of 2022 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)