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ORDER SHEET
ALP/1/2021
with
ALP/2/2021

IN THE HIGH COURT AT CALCUTTA
EXTRA-ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

BINA DEVI SARDA
Versus
MAHENDRA KUMAR SARDA AND ORS.
AND
-PRADIP KUMAR SARDA-
Versus
MAHENDRA KUMAR SARDA AND ORS.

BEFORE:

The Hon'ble JUSTICE KESANG DOMA BHUTIA

Date : 31ST March, 2022.

Appearance:

Mr. SumanDutt, Adv.
Mr. Sukrit Mukherjee, Adv.
Mr. Joydeep Roy, Adv.

For petitioner

Mr. FalguniBandyapadhyay, Adv.

Mr. Amit Das, Adv.

Ms. RiyaBallav, Adv.

For respondent nos. 1 & 3

The Court: This common order will dispose of both the applications under Clause 13 of the Letters Patent Act, 1865 as in both applications parties are same, subject matter is also same and relief sought is also same.

ALP no.1 of 2021 is filed by Bina Devi Sarda and who has been arrayed as Respondent no.5 in ALP No.2 of 2021 and **ALP No.2 of 2021** is filed by Pradip Kumar Sarda, who has been arrayed as Respondent No.5 in ALP no.1 of

2021. Both the ALPS are mainly filed against Mahendra Kumar Sarda, Sagar Realty Private Limited and Sunita Devi Sarda, but also impleading Kaluram Sarda & Grandsons Partnership Firm and Petitioners of both the ALPS.

In both the ALPS petitioners have prayed for transfer of Title Suit No. 187 of 2014 pending in the Additional Court of Civil Judge, (Junior Division) at Suri in the district of Birbhum and Title Suit No. 69 of 2015 pending in the Additional Court of Civil Judge, (Junior Division) at Suri in the district of Birbhum filed by them against Mahendra Kumar Sarda and Sagar Realty Private Limited to this Hon'ble High Court where Civil Suit No. 76 of 2016 filed by Dr. Pradip Kumar Sarda is pending.

The facts pleaded in both the applications under Clause 13 of the Letters Patent Act, 1865 is that there was a family dispute amongst the members of Sarda family, in respect of their joint family business and properties in the year 1975. The dispute was referred for settlement before an Arbitral Tribunal, which was culminated into an arbitral award. In such award the business of partnership firm namely M/s. Kaluram Sarda & Grandsons and some landed properties were allotted in favour of one of the members of the family i.e. Mohanlal Sardar's Branch.

Then firm was re-constituted on 15th September, 1977 with the family members of Mohanlal Sarda namely Mohanlal Sarda himself, his wife Sarla Devi Sarda and his three Sons viz. the petitioner /applicant Pradip Kumar Sardar, Mahendra Kumar Sarda, the respondent No. 1 and Basudeo Sarda, the deceased husband of Bina Devi Sarda.

Mohanlal Sarda expired on 2nd September, 1988, Basudeo Sarda one of his sons died on 29th November, 2003 and his wife Sarla Devi Sarda died on 21st November, 2005. On their demise the partnership firm is constituted with two partners namely Pradip Kumar Sardar and Mahendra Kumar Sarda, the respondent no. 1.

Pradip Kumar Sardar being a doctor was/is a permanent resident of United Kingdom and as such the business of the firm was run by respondent no. 1. The firm owns an oil mill, property in Kolkatta and landed properties in Birbhum and which are in possession of respondent no. 1 as a partner of the firm.

It has been alleged that in the month of February, 2009 Mahendra Kumar Sarda, the respondent no. 1 wrote to the petitioner Pradip Kumar Sardar requesting him to execute a general power of attorney in favour of his wife the respondent no. 3 for managing the properties of the firm. A similar request was also made to Bina Devi Sarda, the respondent no. 5 the widow of their deceased brother Basudeo Sarda and which were expressly refused in writing on 27th February, 2009.

Sandeep Sarda son of Pradip Kumar Sardar visited Birbhum sometime in 2015 and at that time he came to know Mahendra Kumar Sarda, the respondent no. 1 in collusion with his wife Sunita Devi Sarda, the respondent no. 3 prepared a forged power of attorney purportedly executed by Pradip Kumar Sardar and Bina Devi Sarda in favour of Sunita Devi Sarda, the respondent no. 3. The respondent no. 3 on the basis of such forged power of

attorney transferred joint family properties of the firm in favour of her husband Mahendra Kumar Sarda, the respondent no. 1 on 26.11.2010 and who in turn transferred the immovable properties of the firm and that of joint family to Sagar Realty Private Limited, the respondent no.2.

On learning about illegal transfer of the immovable properties of the joint family and firm, Dr.Pradip Kumar Sarda one of the partners of the firm filed a Title Suit No. 69 of 2015 and Bina Devi Sarda another joint family member has filed Title Suit No. 187 of 2014 before the Court of Civil Judge, (Junior Division), Additional Court at Suri, in the District of Birbhum, for declaration the deed dated 26.11.2010 is manufactured documents and not binding upon the them. Further, for declaration the deed of conveyance dated 7th May, 2013 executed by respondent no. 1 in favour of Sagar Realty Private Limited, is also not binding upon them. Dr.Pradip Kumar Sarda has also filed another Civil Suit No. 76 of 2016 before this Hon'ble High Court for dissolution of the partnership firm and for winding up affairs of the firm.

It has been alleged that, if any, decree is passed in Civil Suit No. 76 of 2016 by the Hon'ble High Court then such decree cannot be executed without cancellation of those deeds which have been executed on the basis of forged power of attorney purportedly executed by the Petitioners in favour of Sunita Devi, the present respondent no.3. That if both the suits are allowed to proceed in two different courts then there is every possibility of conflicting judicial decision resulting in multiplicity of judicial proceeding. In both the suits the

subject matter is the business of the partnership firm, the properties owned by the firm and joint family and between the same parties.

It has also been stated that the petitioner is about 73 years old and heart patient and mostly wheelchair bound. The petitioner being a resident of United Kingdom it is extremely difficult to co-ordinate with the Advocate engaged by him to conduct the suit before the Suri Court as well as with Advocate of this Hon'ble High Court due to which the regular update of the suit is not timely received. It would be immense advantage to the parties if both the suits are tried by the same bench of this Hon'ble High Court, where suit for dissolution of firm is pending. Therefore, they have prayed for transfer of the Title Suit No. 187 of 2014 and Title Suit No. 69 of 2015 from the Court of Civil Judge, (Junior Division), Additional Court at Suri in the district of Birbhum to this Hon'ble High Court, where CS 76 of 2016 is pending.

The respondent no. 2 and 3 by filling an affidavit of opposition have alleged that the Civil Suit No. 76 of 2016 is in respect of dissolution of partnership firm and that respondent no. 2 and 3 are not partners of M/s. KaluramSarda& Grandsons. The prayer made in the Title Suit No. 187 of 2014 and Title Suit No. 69 of 2015 are for declaration that the petitioners are the legal owners of the property described in the schedule B of the plaint and for cancellation of sale deeds dated 26.11.2010 and 07.05.2013.

They have also alleged the petitioner Dr. Pradip Kumar Sarda has duly executed power of attorney in High Commissioner Office of India at U.K. and on which High Commissioner had countersigned. The Sandeep Sarda son of

petitioner received the consideration money of the properties situated at Birbhum, but he has mischievously taken away the power of attorney executed by his father. Thus alleged that cause of action of both the suits are different and thereby they have prayed for rejection of the applications under Clause 13 of Letters Patents Act, 1865.

Apparently, two brothers are still partners of the partnership firm namely M/s. KaluramSarda& Grandsons and which owns oil mill business and other immovable properties situated in the district of Birbhum as well as at Middleton Row in Kolkata.

The petitioners by filing the present applications have only prayed for transfer of cases filed by them in the Court of Civil Judge, (Junior Division), Additional Court at Suri, in the district of Birbhum to this Hon'ble High Court for effective determination of both the suits in order to avoid conflicting judicial decisions and convenience of all parties to the suits who are ordinarily residents of Kolkata and United Kingdom and for easy management of all the suits by same set of lawyers who are engaged by the parties to conduct the case pending before the Hon'ble High Court. The petitioners nowhere in their applications have prayed for analogous trial or for stay of the subsequently filed suit. Therefore, it becomes immaterial whether parties to the suits are same or not or whether reliefs claimed are same or not or whether cause of action in both the suits are same or not and whether subject matter is same or not.

It would be appropriate to transfer the Title Suit No. 187 of 2014 and Title Suit No. 69 of 2015 pending before the Court of Civil Judge (Junior Division), Additional Court, Suri in the district of Birbhum to this Hon'ble High Court where Civil Case no.76 of 2016 is pending. All the suits should be consolidated and tried simultaneously as in all the suits parties will lead more or less same evidence.

Accordingly, ALP 1 of 2021 and ALP 2 of 2021 are allowed.

Title Suit No. 187 of 2014 and Title Suit No. 69 of 2015 pending before the Court of Civil Judge (Junior Division), Additional Court, Suri in the district of Birbhum are withdrawn and transferred to this Hon'ble High Court where Civil Case no.76 of 2016 is pending.

Department to inform the learned court below to transfer the records of both Title Suit No. 187 of 2014 and Title Suit No. 69 of 2015 forthwith and place the same before the Hon'ble Bench of this court where Civil Case no.76 of 2016 is pending for hearing and disposal.

The parties shall appear before the Hon'ble Court where the Civil Suit 76 of 2016 is pending on 2nd May, 2022.

There will be no order as to cost.

All parties to act in terms of the copy of the order downloaded from the official website of this court.

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

(Kesang Doma Bhutita J.)