

13. 02. 2023

BP  
Sl.39  
Court No. 12

CO 41 of 2020

Laxmi Debi (Pandit)

Vs.

Sri Sheo Prasad Pandit & Ors.

Mr. Debasish Chattopadhyay  
Mr. Tirthankar Basu  
Mr. Loknath Paul  
..for the petitioner

Mr. Sabyasachi Mukherjee  
Mr. Monish Das  
Ms. Debarati Chowdhury  
Mr. Mukesh Khanna  
Mr. Bibek Dey  
Mr. S.N. Ahmed  
..for the Opposite Party  
Nos. 1 to 4

Both the parties are represented by their  
respective learned advocates.

I have heard the learned advocates of the  
contending parties for and against the instant  
revisional application. The present revisional  
application is now taken up for passing the appropriate  
order.

In this revisional application under Article  
227 of the Constitution of India, the Order no. 15 dated  
17.08.2019 passed in Title Suit No. 208 of 2016 as

passed by learned Civil Judge (Junior Division), 1<sup>st</sup> Court, Barrackpore has been assailed.

By the impugned order, learned trial court has allowed the petition under Section 10 of the Code of Civil Procedure as filed by the defendant in Title Suit No. 208 of 2016. The plaintiff of Title Suit No. 208 of 2016 felt aggrieved and thus preferred the instant revisional application.

At the time of hearing, learned advocate for the revisionist at the very outset draws attention of this court to the copy of the plaint as filed in Title Suit No. 208 of 2016 by the present petitioner. Attention of this court has also drawn to the copy of the plaint as filed in Title Suit No. 187 of 2014 by the present opposite parties. It is contended that in Title Suit No. 208 of 2016 the present revisionist being the plaintiff has sought for permanent injunction in respect of the suit property on the basis of a probated will as against the defendants who are the opposite parties herein. It is further contended that in Title Suit No. 187 of 2014 the present opposite parties, being the plaintiffs, have sought for decree for recovery of possession as against the present revisionist as defendant describing her as a licensee. It is thus contended that on bare perusal of the pleading of the two plaints, it would reveal that the matter in issues as involved in the aforesaid two suits

are not identical and, therefore, learned trial court is not at all justified in passing the impugned order staying all further proceeding of Title Suit No. 208 of 2016.

Per contra, learned advocate for the opposite parties submits before this court that there is no justification for challenging the order impugned since learned trial court has correctly come to a decision that not only the matter in issues in both the suits are identical but also the causes of action for the initiation of the aforesaid two suits are same. It is thus contended that it is a fit case for dismissal of the instant revisional application.

On perusal of the entire materials as placed before this court and after hearing learned advocates of both the sides, it appears to this court that in Title Suit No. 187 of 2014, the present opposite parties, being the plaintiffs, have filed the said suit as against the present revisionist being the defendant for recovery of khas possession describing her as a licensee. On the contrary, in Title Suit No. 208 of 2016 the present revisionist, being the plaintiff, has filed the said suit for a decree for permanent injunction restraining the present opposite parties/defendants therein from changing the nature and character of the suit property forcibly and illegally and the foundation of her claim in

the said Title Suit No. 208 of 2016 is based on a probated will as claimed to have been executed by one Mungri Kumain on 04.02.1978.

Such being the position, under no stretch of imagination, it can be said that the matter in issues in both the suits are identical in nature and that there may be chance of passing conflicting judgements if the subsequent suit is not stayed.

In view of such, the instant revisional application is hereby allowed.

The impugned Order No. 15 dated 17.08.2019 as passed in Title Suit No. 208 of 2016 by the learned Civil Judge, Junior Division, 1<sup>st</sup> Court, Barasat is hereby set aside.

It reveals to this court that both Title Suit No. 187 of 2014 and Title Suit No. 208 of 2016 are pending before the selfsame court where the parties of both the suits are almost identical.

In view of such, this court in exercise of its plenary power directs the learned Civil Judge, Junior Division, 1<sup>st</sup> Court, Barrackpore to try Title Suit No. 187 of 2014 and Title Suit No. 208 of 2016 analogously. It is further directed that the learned trial court shall conclude the hearing of the aforesaid two analogous suits within a year from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Partha Sarathi Sen, J. )

