

S/L 18
20.02.2023
Court. No. 12
Sourav

CO 706 of 2019

**Niyasa Sarkar & Ors.
Vs.
Tagobala Dasi & Ors.**

Mr. Mrinal Kanti Ghosh

...for the petitioners.

*Mr. Sabyasachi Mukhopadhyay
Ms. Koushikee Banerjee*

...for the opposite parties.

Both the petitioners and the opposite parties are represented by their respective learned advocates.

The present revisional application is now taken up for hearing.

Heard learned advocates for the parties at length.

The present revisional application is now taken up for passing appropriate order.

By filing the instant revisional application under Article 227 of the Constitution of India, the revisionists have challenged the judgment dated December 13, 2018 as passed in Civil Revision No. 2 of 2018 by the learned District Judge, Malda, whereby and whereunder the said court by the impugned judgment dismissed the Civil Revision Case No. 2 of 2018 as has been preferred challenging the Order No. 50 dated 14.12.2017 as passed by learned Civil Judge (Junior Division), 1st Court, Malda.

On perusal of the entire materials as placed before this Court and after giving due considerations over the submissions of the learned advocates for the contending parties, it reveals that before the learned Civil Judge (Junior

Division), 1st Court, Malda, hereinafter referred to as the trial court in Title Suit No. 205 of 2013, the plaintiffs who are the revisionists before this Court have filed an application under Order 23 Rule 1(3) of the Code of Civil Procedure praying for withdrawal of the said suit with a liberty to file a suit afresh on the self-same cause of action in respect of the self-same suit property.

As discussed above, by Order No. 50 dated 14.12.2017, the learned trial court dismissed such petition and challenging such order before the learned District Judge, Malda, Civil Revision Case No. 2 of 2018 was preferred which by the impugned judgment was dismissed.

In support of the instant revisional application, Mr. Ghosh, learned advocate for the revisionists/plaintiffs took me to the photocopy of the petition under Order 23 Rule 1(3) of the Code of Civil Procedure as filed before the learned trial court. It is contended by him that in the said petition, the formal defects which were discovered during the pendency of Title Suit No. 205 of 2013 have been clearly mentioned. It is further submitted that the learned trial judge while rejecting the said petition as well as the learned revisional court below while passing the impugned order failed to visualize those formal defects of the plaint and thus, passed a wrong order which is not justifiable in the eye of law. It is further argued by Mr. Ghosh, learned advocate that the defects as mentioned in the said petition for withdrawal of the suit with a liberty to file afresh comes under the purview of 'confusion regarding identification of the suit property'.

Per contra, Mr. Mukhopadhyay, learned advocate for the opposite parties contended that before the learned trial court as well as before the learned revisional court below, the present revisionists/plaintiffs have miserably failed to make out a case for obtaining a relief under Order 23 Rule 1(3) of the Code of Civil Procedure. It is submitted by him that since the revisionists/plaintiffs before the learned trial court has failed to disclose the formal defects of his plaint, learned trial court as well as learned revisional court below were justified in passing the order of rejection of the petition as well as the impugned order.

This Court has meticulously gone through the entire materials namely; the copy of the petition as filed under Order 23 Rule 1(3) of the Code of Civil Procedure, copy of the written objection as filed by the opposite parties before the learned trial court as against such application, the certified copy of Order No. 50 dated 14.12.2017 and the certified copy of the impugned judgment. This Court has given its due consideration over the submissions of the learned advocates of both sides. This Court has also perused the provisions of Order 23 Rule 1(3) of the Code of Civil Procedure.

On perusal of the copy of the petition under Order 23 Rule 1(3) of the Code of Civil Procedure, it reveals that in the said petition the plaintiffs have averred that some formal defects accrued in the plaint as filed in Title Suit No. 205 of 2013, namely, i) there is want of proper description of the suit property; ii) there is no proper description as to how the suit property was devolved upon whom; iii) there occurs improper description--of the title deeds in respect of suit

property by which the suit property devolved upon the parties to the suit etc.

In considered view of this Court, the defects as mentioned in the said application for withdrawal of the suit comes under the formal defects which if not cured by withdrawing the said suit would lead to a miscarriage of justice.

In view of such, this Court considers that both the learned trial court as well as the revisional court below has failed to realize the true spirit of the application as filed by the present revisionists/plaintiffs under Order 23 Rule 1(3) of the Code of Civil Procedure.

As a result, the instant revisional application succeeds. Consequently, the judgment dated 13.12.2018 as passed by learned District Judge, Malda in Civil Revision Case No. 02 of 2018 and Order No. 50 dated 14.12.2017 as passed by the learned Civil Judge (Junior Division), 1st Court, Malda In Title Suit No. 205 of 2013 are hereby set aside.

Consequently, the petition under order 23 Rule 1(3) of the Code of Civil Procedure as filed by the present revisionists/plaintiffs in Title Suit No. 205 of 2013 before the learned trial Judge is hereby allowed on contest subject to payment of cost of Rs. 10,000/- which is to be payable by the present revisionists/plaintiffs to any of the opposite parties/defendants of Title Suit No. 205 of 2013 within a month from the date of passing of this order.

It is further directed that on payment of such cost and on filing of the receipts showing payment of such cost, learned trial judge in Title Suit No. 205 of 2013 shall pass an

appropriate order under Order 23 Rule 1(3) of the Code of Civil Procedure allowing the plaintiffs of the said suit to withdraw the said suit with a liberty to institute a fresh suit in respect of the subject matter of such suit either on the self-same cause of action or on different cause of action.

Parties to act on the server copy of this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)