

S/L 25
12.04.2023
Court. No. 12
Suwayan

CO 1016 of 2022

**Saraswati Mondal & Ors.
Vs.
Sankar Prasad Das & Ors.**

*Mr. Sounak Bhattacharya
Mr. Abhirup Halder
Mr. Anirban Saha Ray*

...for the petitioners.

Mr. Ramprokash Banerjee

...for the opposite party no. 1.

Learned Advocate for the revisionists and learned Advocate for the plaintiff/opposite party No. 1 are present.

The present revisional application is not taken up for hearing.

Heard learned Advocates for both the sides perused the entire materials as placed before this Court.

In this revisional application the Order No. 109 dated February 26, 2021 as passed by learned Civil Judge (Junior Division), 1st Court at Baruipur, District – 24 Parganas (South) in Misc. Case No. 12 of 2021 arising out of Title Execution Case No. 9 of 2010 has been assailed.

By the impugned order learned Trial Court in Misc. Case No. 12 of 2021 refused to grant stay of all further proceeding of Title Execution Case No. 9 of 2010 as filed by the present revisionists who have claimed their independent right, title and interest over the decretal property.

Mr. Bhattacharya, learned Advocate for the revisionists submits before this Court that since Misc.

Case No. 12 of 2021 has been filed by the present revisionists under the provisions of Order 21 Rules 97, 98, 99, 100 and 101 of the Code of Civil Procedure as per the provisions of the Order 21 of the Code of Civil Procedure, the same is treated to be a suit and without adjudication of title of the present revisionist, learned Trial Court is not supposed to proceed with the Title Execution Case No. 9 of 2010. It is, thus, contended by Mr. Bhattacharya, that in the event learned Trial Court proceeds with Title Execution Case No. 9 of 2010 the very purpose of filing Misc. Case No. 12 of 2021 would become infructuous.

Mr. Ramprokash Banerjee, learned Advocate for the plaintiff/opposite party No. 1, however, opposes such prayer. It is contended by Mr. Banerjee that Misc. Case No. 12 of 2021 is a frivolous application and the same has been filed only to restrict the plaintiff/opposite party No. 1 to deprive him from the usufructs of the decree which he has obtained after a considerable length of time. Mr. Banerjee, thus, submits that learned Trial Court is very much justified in passing the impugned order.

On perusal of the entire materials as placed before this Court and after hearing the learned Advocates of both sides it appears to this Court that justice would be subserved with this Court directs the learned Trial Court to dispose of Misc. Case No. 12 of 2021 within a time framed.

Accordingly, while disposing the instant revisional application this Court directs the learned Trial Court to proceed with the Misc. Case No. 12 of 2021 in *de die in*

diem manner without granting unnecessary adjournment to the either sides and learned Trial Court is hereby directed to dispose of the Misc. Case No. 12 of 2021 within a period of three months from the date of communication of this order.

It is made clear that the time limit of three months as fixed by this Court is mandatory and learned District Judge, South 24 Parganas is hereby directed to supervise and ensure that the order as passed by this Court is duly complied with by the learned Trial Court. It is further ordered that learned Trial Court is also at liberty to proceed with the Title Execution Case No. 9 of 2010 simultaneously but it shall not issue the writ of possession in favour of the decree-holder till the disposal of Misc. Case No. 12 of 2021 since issuance of writ in Title Execution Case No. 9 of 2010 will be subject to the result of Misc. Case No. 12 of 2021.

Department is hereby directed to forward copies of this order both to the learned Trial Court as well as to the learned District Judge, South 24 Pargana by special messenger(s) and the cost of such special messenger(s) is to be borne by the present revisionists. The present revisionists are hereby directed to deposit the cost of special messenger(s) positively by April 17, 2023 from the date passing of this order.

With the aforementioned observation the instant revisional application being CO 1016 of 2022 is hereby disposed of.

Parties to act on the server copies of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)