

October 9, 2023
Sl. No.6 & 7
Court No.19
s.biswas

CO 1458 of 2023

WITH

CO 1396 of 2023

Sri Bijoy Kumar Roy

vs.

Premasish Saha and others

Mr. Prantick Ghosh

Mr. Prasad Bhattacharyya

... for the petitioner

Affidavit of service filed by the petitioner, is taken on record.

Despite service upon Mr. Atanu Bhattacharjee, learned advocate appearing on behalf of the opposite parties in the learned court below, none appears on behalf of the opposite parties. The postal receipts show that the opposite parties have refused service of both the revisional applications. The postal articles are taken on record. The endorsements in the postal articles have been checked by the court. This court is of the view that no purpose will be served in keeping the revisional applications pending. Thus, both the revisional applications are taken up for final disposal. Refusal is good service.

C.O. 1458 of 2023 is an application challenging an order dated April 5, 2021 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat, North 24 Parganas in Title Suit No.887 of 2015.

By the order impugned, all further proceedings in Title Suit No.887 of 2015 were stayed by the learned Civil Judge (Senior Division), 2nd Court at Barasat, till the disposal of the Title Suit No.63 of 2014, which was pending before the learned Civil Judge (Junior Division), Bidhannagar.

The petitioner submits that the Title Suit No.887 of 2015 was at its initial stage and was filed by the petitioner against the opposite parties, for partition. The opposite parties had filed a prior suit being Title Suit No.63 of 2014 for cancellation of the title deed of the petitioner. On the basis of such title deed, the petitioner claims co-sharership in respect of the property in question and had filed the suit for partition, later on.

According to Mr. Ghosh, learned advocate for the petitioner, an application was already filed before the learned District Judge at Barasat, District 24 Parganas (North) for transfer of the Title Suit No.63 of 2014, which was pending before the learned Civil Judge (Junior Division), Bidhannagar to the court of the learned Civil Judge (Senior Division), 2nd Court, Barasat for analogous hearing. During the pendency of the said application, the subsequent suit was stayed.

According to Mr. Ghosh, the parties were the same, the properties were the same and evidence in

one suit would serve the purpose of the other suit and in both the suits the right, title and interest of the parties will be decided.

The defendants/opposite parties filed the suit for declaration and permanent injunction. Declaration that the sale deed executed on August 31, 2012 by the defendant no.2 in the name of the defendant no.1 was null and void and ineffective was prayed for. Further prayer was for cancellation of the impugned deed. The said suit was initially filed before the learned Civil Judge (Junior Division), 3rd Court at Sealdah.

Thereafter, the suit was transferred to the court of the learned Civil Judge (Junior Division), Bidhannagar. The petitioner was contesting the suit.

The petitioner filed the Title Suit No.887 of 2015 before the learned Civil Judge (Senior Division), 2nd Court at Barasat, for partition and declaration of 60% share in the suit property, on the basis of the deed, which was the subject matter of challenge in the prior suit.

Accordingly, an application was filed by the petitioner praying for transfer of the prior suit to the court of the learned Civil Judge (Senior Division), 2nd Court, Barasat. Such application was filed before the learned District Judge at Barasat, North 24 Parganas.

According to Mr. Ghosh, the suit should be heard analogously.

C.O. 1396 of 2023 has been filed challenging an order dated February 3, 2023, by which the learned District Judge, North 24 Parganas at Barasat rejected the Misc. Case No.206 of 2018.

The learned District Judge observed that as the subsequent suit had already been stayed, the question of transferring the suit would not arise.

Having considered the claims in both the suit and having heard Mr. Ghosh, this court is of the view that justice would be subserved, if the two suits are heard analogously. Analogous hearing would prevent multiplicity of proceedings and unnecessary harassment to the parties who would have to attend two different courts at two different places. The questions to be determined in both the suits are interlinked both on law and facts. The issues are whether the petitioner had acquired any right, title and interest on the basis of the impugned deed, cancellation of which has been prayed for in the prior suit or whether on the basis of such impugned deed, the petitioner had acquired 60% share in the suit property. Both the questions/issues are inter-related and inter-connected.

Under such circumstances and to prevent wastage of court's time and multiplicity of

proceedings, the suits should be heard analogously. The orders impugned in both the revisional applications are set aside.

The learned District Judge, North 24 Parganas is directed to withdraw Title Suit No.63 of 2014, which is pending before the learned Civil Judge (Junior Division), Bidhannagar and transfer the same to the court of the learned Civil Judge (Senior Division), 2nd Court, Barasat for analogous trial with Title Suit No.887 of 2015.

Upon receipt of the records, the learned transferee court shall issue notices to both the parties and thereafter proceed with the hearing of both the suits in accordance with law.

This order shall not be construed as any observation on merits of the suits filed by the petitioner. The suits shall be decided on their own merits and independently.

The revisional applications are thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)