

13.4.2023
22
Ct. no. 652
sb

CO 1466 of 2021

Ali Hossain Seikh & Ors.
Vs.
Mannan Seikh & Ors.

Mr. Rwitendra Banerjee
Mr. Shibasis Chatterjee ...for the petitioners

Mr. Partha Pratim Roy
Mr. Anirban Das ...for the opposite parties

This is an application under Article 227 of the Constitution of India against order no. 85 dated 10.3.2021 passed by the learned Civil Judge, Junior Division, Additional court, Lalbagh, Murshidabad in Title Suit no. 142 of 2012.

Petitioners as plaintiffs instituted aforesaid suit against the opposite parties herein praying inter alia, for a decree for declaration that the decree passed in Title Suit no. 267 of 1968 (hereinafter referred to as suit of 1968) is collusive, fraudulent and void. In the said suit, the opposite parties herein had entered appearance and filed their joint written statement. The petitioners in the said suit, categorically asserted that two vital documents i.e. the plaint and the certified copy of orders passed in the said suit of 1968 are required for complete and effective adjudication of the instant suit. Accordingly, the petitioners filed two separate applications, out of which in

one application, the plaintiff sought for production of plaint of the former suit and certified copy of the orders passed in the former suit and in the other application, they sought for calling the entire case record of the said suit of 1968.

Learned court below, by the impugned composite order, was pleased to reject both the applications. Learned counsel for the petitioners submits that the documents in connection with that suit of 1961 are the vital evidence which forms very foundation of the instant suit and learned court below was erred in holding that such documents are beyond the pleading of any party. He should have considered that there has been no lacunae which the plaintiffs/petitioners intended to cover up. Accordingly prayed for allowing the plaintiff's prayer for setting aside the order impugned.

Learned counsel for the opposite parties submits that plaintiffs have not given any reason as to what prevented them to make the said prayer at an early stage. Moreover, calling for such record is not at all required for the purpose of adjudication of the present suit as the cause of action of the suit allegedly arose only on 12.2.2007 and said cause of action of the suit has got no connection with the present prayer made by the plaintiffs/petitioners. He further submits that the suit has already been posted for hearing argument and at the

final stage of hearing, the plaintiffs has come out with the said application only to drag the final disposal of the suit.

I have considered the submissions made by both the parties. From the cause title claim as well as from the prayer portion of the present suit, it is palpably clear that the plaintiffs suit relates to declaration that the judgment and decree passed in Title suit no. 167 of 1968 by the Munsif court at Lalbagh in respect of Kha schedule property, is void. Now the learned trial court, in support of his rejection order, has stated that the suit is on the verge of being disposed of and he further stated that there is no mention as to what prevented the plaintiffs from preferring petitions on the earlier occasions.

Learned court below was erred in observing that as the evidence of the parties have already been completed and as the plaintiffs have not made such prayer earlier so the applications are liable to be rejected.

The court below ought to have considered whether calling for such record is required for effective and conclusive adjudication of the said suit. In fact, nothing reflected in the order impugned to that extent. Since this is a suit where the prayer is that the decree passed in Title suit no. 267 of 1968 is a void decree, the record of the said proceeding is very much required for effective and conclusive adjudication of the present suit.

In view of above, C.O. 1466 of 2021 is allowed. The impugned order no. 85 dated 10.3.2021 passed by the

learned Civil Judge, Junior Division, Additional court, Lalbagh, Murshidabad in Title Suit no. 142 of 2012 is hereby set aside.

Learned court below is directed to call for the record of Title suit no. 267 of 1968 at the earliest and on the basis of evidence already on record and also considering the materials available in the record of Title suit no. 267 of 1968 and after hearing argument on behalf of both the parties, he will pronounce the judgment preferably within a period of three months from the date of communication of the order.

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

(Ajoy Kumar Mukherjee, J.)