

S/L 18
04.08.2023
Court. No. 29
Suvayan

CO 2034 of 2022

**Nirmal Mondal & Ors.
Vs.
Sri Utpalendu Mondal & Ors.**

*Mr. Sounak Bhattacharyya
Mr. Chandra Nath Sarkar
Mr. Sounak Mandal
Mr. Abhirup Haldar
Mr. Anirban Saha Roy
Mr. Pradipta Sen*

...for the petitioners.

Mr. Gobinda Chandra Baidya

...for the opposite parties.

1. Both the petitioners and the opposite parties are represented by their respective learned Advocates.
2. Heard learned Advocates for the parties at length.
3. The instant revisional application as filed under Article 227 of the Constitution of India is now taken up for passing appropriate order.
4. In this revisional application the defendants of Title Suit No. 16965 of 2012 as pending before the learned Civil Judge (Senior Division), 9th Court at Alipore has assailed the said Court's order dated 20.06.2022 as passed in said suit whereby and whereunder the defendants' application under Order 14 Rule 2 read with Sections 11 and 151 of the Code of Civil Procedure dated 20.06.2014 (hereinafter referred to as the 'said application') as filed by the defendant No. 1 was rejected on contest with cost of Rs. 7,000/- to be paid by the defendant No. 1 to the plaintiffs. The defendants of the

said suit felt aggrieved and, thus, preferred the instant revisional application.

5. In support of the instant revisional application, learned Advocate for the defendants/petitioners at the very outset draws attention of this Court to the plaint as filed in Title Suit No. 16965 of 2012 vis a vis the copy of the said application which was turned down by the learned Trial Court by the impugned order. It is contended on behalf of the defendants/revisionists that on comparative study of the schedule of the plaint of Title Suit No. 16965 of 2012 and schedule of Title Suit No. 80 of 1966 which has been mentioned in page No. 3 of the said application, it would reveal that both the schedules are identical. It is further contended on behalf of the defendants/petitions that the parties of Title Suit No. 16965 of 2012 as well as parties of Title Suit No. 80 of 1966 are either almost identical or they are litigating under same title. It is further contended on behalf of the revisionists/defendants that while passing the impugned order learned Trial Court has not only failed to visualise the similarity of the subject matter of the two suits as well as the parties to the said two suits or the parties litigating under the same title but also came to a wrong finding that provision of Section 11 of the Code of Civil Procedure has got no application in respect of a previous suit between the same parties and in respect of the self-same subject if the earlier suit has been decreed on compromise.

6. Mr. Bhattacharyya in support of his contention places his reliance upon two reported decisions, viz.,

Rama Narang vs. Ramesh Narang and Another reported in **(2006) 11 Supreme Court Cases 114** and ***Shankar Sitaram Sontakke and Another vs. Balkrishna Sitaram Sontakke and others*** reported in **(1954) AIR (SC) 352**.

7. It is contended by Mr. Bhattacharyya that in the aforesaid two reported decisions, the Hon'ble Apex Court has made it clear that a compromise decree is also a decree unless such compromise decree is set aside by invoking the provisions of Order 23 Rule 3 of the Code of Civil Procedure and, therefore, under no stretch of imagination it can be said that the compromise decree as passed in Title Suit No. 80 of 1966 on July 29, 1969 ought not to be construed as a decree for coming to a logical finding while applying the provision of Section 11 of the Code of Civil Procedure. It is further contended on behalf of the revisionists/defendants that the reported decision of ***Pulavarathi Venkata Subba Rao vs. Valluri Jagannadha Rao & Ors.*** reported in ***AIR 1967 SC 591*** as relied upon by the learned Trial Court while passing the impugned order has not been considered by the Hon'ble Apex Court in the reported decision of ***Rama Narang (Supra)*** which has been passed by a co-ordinate Bench of similar strength of the Hon'ble Supreme Court.

8. It is contended further by Mr. Bhattacharyya that since the reported decisions of ***P.V. Subba Rao (Supra)*** and ***Rama Narang (Supra)*** are contrary, the learned Trial Court ought to have followed the judgment

which appears to the Court to state the law accurately or more accurately than the other conflicting judgment, in view of the reported decision of ***Bholanath Karmakar vs. Madan Mohan Karmakar & Ors.*** reported in ***AIR 1988 CAL 1.***

9. It is, thus, contended that this is a fit case for allowing the instant revisinal application as also the said application as filed before the learned Trial Court by the defendant No. 1 of the said suit.

10. *Per contra*, Mr. Baidya, learned Advocate for the plaintiffs/opposite parties at the very outset draws attention of this Court to the written objection as filed by his clients before the learned Trial Court against the said application. Attention of this Court is also drawn to the photocopy of the written statement as filed in Title Suit No. 80 of 1966, photocopy of the compromise decree as arrived at in Title Suit No. 80 of 1966 and the copy of the plaint as filed in Title Suit No. 16965 of 2012 before the learned Trial Court. It is contended by Mr. Baidya that though there lies similarity in the schedule of the properties as involved in the Title Suit No. 16965 of 2012 and Title Suit No. 80 of 1966 but it cannot be said that the parties in Title Suit No. 80 of 1966 and the parties in the subsequent suit being Title Suit No. 16965 of 2012 are either same or litigating under the same title. It is further contended by Mr. Baidya that though in the written objection as filed by the plaintiffs it is was specifically averred that plaintiffs' predecessor in interest was not made party in the earlier suit but learned Trial court while

passing the impugned order has wrongly recorded that the plaintiffs of the present suit have been made parties in earlier suit.

11. Drawing further attention of this Court to the plaint as filed in Title Suit No. 16965 of 2012 and to the plaint as filed in Title Suit No. 80 of 1966 it is contended by Mr. Baidya that plaintiffs/opposite parties' predecessor in interest, namely, Atul Krishna Mondal, since deceased purchased a portion of the schedule mentioned property on 08.05.1966 from one Mahendra Nath Mondal and the earlier suit being Title Suit No. 80 of 1966 was filed on 29.08.1966. It is, thus, contended by Mr. Baidya that since Title Suit No. 80 of 1966 was filed later to the purchase of the portion of the schedule mentioned property and since the said Atul Krishna Mondal being the predecessor in interest of the present plaintiffs/opposite parties had not been made parties in Title Suit No. 80 of 1966, it cannot be said that the plaintiffs' predecessor in interest have been made party in Title Suit No. 80 of 1966 basically on an analogy that Atul Krishna Mondal's vendor Mahendra Nath Mondal was a party in Title Suit No. 80 of 1966.

12. On perusal of the certified copy of the impugned order, this Court finds that the learned Trial Court while passing the impugned order has come to a wrong finding at least *prima facie* that the plaintiffs and/or their predecessor in interest was made party in the earlier suit and thereafter proceeded to dispose of the said

application in a completely different perspective which in considered view of this Court is not correct.

13. In view of such wrong finding as recorded by the learned Trial Court in the impugned order this Court considers that the impugned order is required to be set aside and learned Trial Court be directed to hear out the said application afresh keeping all the points open to be taken by the parties to T.S. No. 16965 of 2012.

14. In view of the discussion made hereinabove, the impugned order dated 20.06.2022 as passed by the learned Civil Judge (Senior Division), 9th Court at Alipore in Title Suit No. 16965 of 2012 is hereby set aside. Learned Trial is hereby directed to rehear the defendant No. 1's application as filed under Order 14 Rule 2 read with Sections 11 and 151 of the Code of Civil Procedure afresh.

15. Considering the fact that in the written objection as filed by the plaintiffs in Title Suit No. 16965 of 2012 there occurred several typographical errors, this Court grants liberty to the plaintiffs of the said suit to amend the written objection for removal of the said typographical errors only so as to enable the learned Trial Court to arrive at a logical conclusion in respect of the said application.

16. Learned Trial Court is hereby directed to dispose of the said application under Order 14 Rule 2 read with Sections 11 and 151 of the Code of Civil Procedure positively within a period of 60 days from the date of communication of this order.

17. With the aforementioned observation, the revisional application being CO 2034 of 2022 is disposed of.

18. Parties and learned Trial court are to act on the server copies of this order.

19. 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.)