

August 2, 2023
Sl. No.8
Court No.19
s.biswas

CO 2523 of 2022

Sunil Mishra
vs.
Kishore Mishra and others

Mr. Rabindranath Mahato
Mr. Aritra Shankar Ray

... for the petitioner

Mr. Sukanta Das

... for the opposite party no.2

The revisional application is disposed of by setting aside the order dated June 24, 2022 passed by the learned Civil Judge (Senior Division), 2nd Court, Paschim Medinipur in Title Suit No.28 of 2012.

Originally, the suit was filed for partition. It appears that by the order impugned, the additional written statement filed by the defendant no.2 was rejected. The defendant no.2 wanted to incorporate certain facts by filing the said additional written statement with regard to discovery of other properties in Uttar Pradesh, which was left behind by one Mukta Prasad Mishra.

According to the petitioner, the said properties ought to have been brought in common hotchpotch. Partial partition was not permitted in law. The learned court below rejected the said application on the ground that there was no reason to believe the contention of the petitioner. While deciding whether the additional written statement should be allowed

or not, the proof of the contents therein was not to be taken into account.

The relevance of the contents in the additional written statement, insofar as, the plaint case was concerned, should have been looked into. Moreover, the defendant No.2 could have also incorporated such fact in the written statement by filing an amendment application. This additional written statement shall, in effect, be treated as an amendment and the written statement and additional written statement shall be heard together.

Hence, this court is of the view that the contesting parties should be compensated by cost. Hence, cost of Rs.30,000/- should be paid, which shall be divided among the contesting parties in the suit. As evidence has started and the clock will be set back in motion, the parties contesting the suit who have suffered for the delay should be entitled to cost. The cost shall be paid within four weeks from date. The additional written statement shall be accepted, upon furnishing the receipt with regard to payment of cost before the learned court below. The truth, veracity and correctness of the averments in the additional written statement have not been considered and are to be considered at the trial. The party asserting such facts will have to prove the same at the time of trial.

The parties may adduce further evidence in view of this order, if found necessary.

This court is of view that as the suit is for partition and there are specific averments on the basis of certain documents that there were other joint properties in Uttar Pradesh, which should have been incorporated in the suit for partition, this order is being passed. In the facts and circumstances of the case, the additional written statement should be accepted. The correctness of the contents shall be decided at the trial.

The revisional application is 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.)