

S/L 16
03.05.2023
Court. No. 12
Sourav

CO 3188 of 2018

**Uttam Ganguly
Vs.
Danabendra Roy & ors.**

*Ms. Shila Sarkar
Mr. Sourav Sen*

...for the petitioner.

1. The petitioner is represented by his learned advocate and he has handed over the affidavit-of-service, which is taken on record.
2. None appears on behalf of the opposite parties in spite of service.
3. Heard Mr. Sen, learned advocate for the petitioner at length.
4. The instant revisional is now taken up for passing appropriate order.
5. In this revisional application as filed under Article 227 of the Constitution of India, the order no. 28 dated 03.08.2018 as passed by learned Civil Judge (Senior Division) 1st Court, Malda, in Title Suit No. 260 of 2013 has been assailed.
6. By the impugned order, learned Trial Court while disposing an application under Section 10 of the Code of Civil Procedure as filed by the defendant of Title Suit No. 260 of 2013 directed that the said suit i.e., Title Suit No. 260 of 2013 shall remain stayed till disposal of O.C. 102 of 2012 which is pending before the learned Civil Judge (Junior Division), 1st Court, Malda.

7. The plaintiff of Title Suit No. 260 of 2013 felt aggrieved and thus preferred the instant revisional application.
8. Mr. Sen, learned advocate for the plaintiff/revisionist in support of the instant revisional application at the very outset draws attention of this Court to the certified copy of the impugned order. Attention of this Court is also drawn to the plaint of Title Suit No. 260 of 2013 as pending before the learned Civil Judge (Senior Division), 1st Court, Malda and the plaint of O.C. 102 of 2012 as pending before the learned Civil Judge (Junior Division), 1st Court, Malda. It is contended by Mr. Sen, learned advocate for the plaintiff/petitioner that since in both the suits the parties are identical and since in both the aforementioned suits the subject matter of the suit property are also identical, learned Trial Court instead of passing an order of stay ought to have passed a direction for disposal of the aforesaid two suits one after another.
9. It is contended further on behalf of the writ petitioner that this Court in exercise of its plenary power under Article 227 of the Constitution of India, may direct transfer of the case record of O.C. 102 of 2012 from the Court of learned Civil Judge (Junior Division), 1st Court, Malda to the Court of learned Civil Judge (Senior Division), 1st Court, Malda and thereafter may direct the later court to dispose of the aforesaid two suits one after another considering the fact that

some of the issues involved in the aforesaid two suits are identical.

10. On perusal of the entire materials as placed before this Court and after hearing the learned advocate for the plaintiff/petitioner, this Court most respectfully disagrees with the submission of Mr. Sen, learned advocate for the plaintiff/petitioner. On comparative study of the plaint of O.C. 102 of 2012 and Title Suit No. 260 of 2013, it reveals that the parties to the aforesaid two suits are almost identical and the matter in issue as involved in both the suits are directly and substantially same.
11. In considered view of this Court, if both the aforementioned two suits which are pending before the two different courts are permitted to proceed together, there may be a chance of conflicting judgment which may lead of multiplicity of suits and proceedings.
12. In further considered view of this Court that while passing the impugned order, learned Trial Court visualized the above position and thus correctly proceeded in a right path while disposing the petition under Section 10 of Code of Civil Procedure as filed by the opposite party of the instant revisional application.
13. In view of the discussion made hereinabove, this Court thus finds no merit in the instant revisional application and, accordingly, the instant revisional application being **CO 3188 of 2018** is hereby

dismissed. As a result, the impugned order no. 28 dated 03.08.2018 as passed by learned Civil Judge (Senior Division) 1st Court, Malda, in Title Suit No. 260 of 2013 is hereby affirmed.

14. However, considering the fact that before the learned Civil Judge (Junior Division), 1st Court, Malda, O.C. 102 of 2012 is pending for a considerable length of time, learned Civil Judge (Junior Division), 1st Court, Malda, is hereby directed to dispose of O.C. 102 of 2012 positively within a period of six months from the date of communication of this order.
15. Department is hereby directed to communicate this order to the Court of learned Civil Judge (Senior Division), 1st Court, Malda as well as to the Court of learned Civil Judge (Senior Division) 1st Court, Malda, for their information and report.
16. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)