

S/L 72  
30.01.2023  
Court. No. 12  
*Suwayan*

**CO 2753 of 2022**

**Ajoy Bhattacharjee**  
**Vs.**  
**Haripada Paul**

*Mr. Sarajit Sen*  
*Mr. Tapas Singha Roy*

*...for the petitioner.*

*Mr. Sourojit Dasgupta*  
*Mr. Akash Munshi*  
*Mr. Ashis Kr. Mukherjee*  
*Mr. Sourabh Prasad*

*...for the opposite party.*

The instant revisional application arises out of Order No. 11 dated 22.07.2022 as passed in Title Suit No. 813 of 2020 by the learned Civil Judge (Senior Division), 3<sup>rd</sup> Court at Alipore, District – South 24 Parganas. By the impugned order learned Trial Court rejected the application under Order 14 Rule 2 read with Section 151 of the Code of Civil Procedure as filed by the defendant. The defendant felt aggrieved and, thus, preferred the instant revisional application.

For effective adjudication of the instant revisional application a look to the said application is necessary. It appears that by filing the said application the defendant before the learned Trial court has urged to frame the following two preliminary issues, namely, “**i) Whether this Ld. Court has the jurisdiction to try this suit?, ii) Whether this instant suit is at all maintainable in its present form?**”

As discussed above learned Trial Court by the impugned order turned down the prayer of the defendant

to frame such preliminary issues. Mr. Sen, learned Advocate for the defendant/petitioner in course of his submission at the very outset draws attention of this Court to the provisions of Sections 58 and 59 of the Transfer of Property Act. It is contended that on a bare perusal of the plaint as filed in Title Suit No. 813 of 2020 it would reveal that the prayers of the plaintiff is based on an unregistered deed of mortgage and since the said instrument has got to be mandatorily registered, the plaintiff is not entitled to any relief as prayed for in the plaint.

Mr. Sen, learned Advocate for the defendant/petitioner, thus, submits that learned Trial Court ought to have visualize the aforementioned legal implication of the Transfer of Property Act, 1882 and, thus, ought to have allowed the said application. Mr. Sen, thus, requests this Court to set aside the impugned order by allowing the instant revisional application.

Mr. Dasgupta, learned Advocate for the plaintiff/opposite party, however, contended that the prayer as made by the defendant before the learned Trial Court under cover of the said application is not maintainable since in the plaint before the learned Trial Court, the plaintiff has not only made prayer for decree for declaration but also for decree for recovery of the entire loan amount, injunction and for other ancillary reliefs.

It is argued that in disposing of Title suit No. 813 of 2020 learned Trial Court is not supposed to dispose of the

issues in piecemeal and on the contrary learned Trial Court is under legal obligation to dispose of all the issues after trial on evidence. Learned Advocate for the plaintiff/opposite party, thus, submits that the instant revisional application may be dismissed.

On perusal of the entire materials as placed before this Court and the impugned order and also after hearing the learned Advocates for contending parties, it appears to this Court that in Title Suit No. 813 of 2020 the plaintiff has not only prayed for a decree for declaration but he has also prayed for recovery of his alleged loan amount, injunction and other ancillary reliefs. In the said application as filed by the defendant under Order 14 Rule 2 of the Code of Civil Procedure the defendant has prayed for framing of two preliminary issues of which one is with regard to the maintainability of the said suit because of the non-registration of the alleged deed of mortgage. However, as discussed above that since before the learned Trial Court the plaintiff has not only sought for declaration of his title on the basis of the said alleged deed of mortgage but also prayed for other reliefs like injunction, recovery of loan amount, etc., the said unregistered deed of mortgage can very well be used as evidence for co-lateral purpose. Such being the position it would not be prudent for the learned Trial Court to dispose of the said suit by framing preliminary issues.

In considered view of this Court, learned Trial Court while passing the impugned order has taken a

correct approach for which the instant revisional application being CO 2753 of 2022 is dismissed.

It is, however, made clear that the observation as made by this Court while disposing of the instant revisional application is purely limited for the purpose of the instant revisional application and, thus, at the time of trial and disposal of the Title Suit No. 813 of 2020 learned Trial Court shall not persuade himself with any of the observations made hereinabove and, thus, all points as would be raised by the parties to the said suit are kept open.

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.)**