

Ct. No. 652
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C.O. 3421 of 2018
Kamal Majhi & Ors.
-Versus-
Sujit Brahmachari

Mr. Anit Rakshit
Mr. Sailendu Sekhar Bayerd **...For the Petitioners**

Mr. Mohit Chatterjee **...For the Opposite Party**

Order No. 62 dated 7th September, 2018 passed by the learned Civil Judge (Junior Division), additional Court, Serampore, Hooghly in Title Suit No. 247 of 2015 has been assailed in the present application.

Petitioners contended that the plaintiffs/petitioners herein filed the aforesaid suit for declaration, injunction and recovery of possession against the defendant / opposite party in connection with a shop room which situates at 400-B, G.T. Road, Mahesh, Serampore, Hooghly. The defendant / opposite party herein contested the said suit by filing written statement contending that the defendant in the year 1989 was inducted as a premises tenant by the owner of the premises and since then the defendant is carrying a grocery shop and he was never evicted by the process of law nor he was made a party in any earlier proceeding. Moreover, during the running of the grocery shop, his landlord died and thereafter Sanatan Majhi and Upendra Majhi created various disturbances in the matter of carrying business and as such defendant filed a suit for declaration and permanent injunction being Title Suit No. 178 of 2014 which is still pending.

On 10th May, 2018 plaintiffs/petitioners in the aforesaid suit filed an application to call for the case record of Title Execution case No. 2 of 2014 arising out of original partition suit being Title Suit No. 62 of 2006 filed before the

Civil Judge (Senior Division), Serampore which was decreed finally in favour of the plaintiffs/petitioners and final decree was put into execution for taking delivery of possession of the portion of the decreetal property in favour of the plaintiffs/petitioners and the possession was handed over to the plaintiffs/petitioners being the decree holder of that suit and bailiff report has been made to that effect, wherein the defendant / opposite party herein has put his signature on 10th July 2014 admitting in the bailiff's report about the delivery of possession in favour of the plaintiffs / petitioners by the defendant / opposite party herein. Petitioners further case is that the said application was made to call for the case record of Title Execution case No. 2 of 2014 was filed on the ground that the witness has denied the fact of illegally continuing to occupy the suit room which was the decreetal property of the plaintiffs, at the time of cross-examination, which compelled the plaintiffs to prefer the said application.

The defendant / opposite party by filing written objection contended that after completion of evidence of PWS and during evidence of DWS such application is not tenable in law and secondly he was not a party to that partition suit and as such no relevance lies in between this suit and earlier suit as both are different in nature and thereby defendant / opposite party prayed for rejection of the said application.

By the impugned order learned Court below rejected the said prayer for calling the case record of Title Execution Case No. 2 of 2014 with the observation that the entire execution case record from a Senior Court cannot be allowed at the instance of any party being contrary to the procedure.

Mr. Anit Rakshit, learned Counsel appearing on

behalf of the petitioners submits that the Court below acted illegally and with material irregularity in rejecting the application for calling the case record of Execution Case No. 2 of 2014 arising out of aforesaid original partition suit being Title Suit No. 62 of 2006. Bailiff's report submitted in Title Execution Case No. 2 of 2014 clearly shows that the possession of the suit room has already been delivered to the plaintiff / petitioners herein wherein the defendant / opposite party was a witness and put his signature on bailiff's report, so it cannot be denied by the opposite party. It is further contended that the Court below acted illegally in not allowing the application, when the petitioners satisfied the Court as to the urgent necessity for calling of aforesaid Title Execution case record from another Court inasmuch as in this case it is required to be proved that delivery of possession of the suit property was made as per bailiff's report in presence of the opposite party herein. Accordingly it is urgently necessary to call for the record of Title Execution Case No. 2 of 2014 from another Court.

Mr. Mohit Chatterjee, learned Counsel appearing on behalf of the opposite party raised vehement objection and contended that he was not a party in the said partition suit in respect of which the aforesaid Execution proceeding being Execution case No. 2 of 2014 had arisen. Said execution proceeding has got no relevancy in the present context and the Court below was justified in observing that there is no urgent necessity in calling the entire record of the execution case from a senior Court and such prayer is contrary to the procedure. Moreover, since exhibit 2 is already on record further calling for the entire record will not serve any fruitful purpose and will frustrate the proceeding of the suit. Accordingly, the opposite party submits that the

order impugned does not call for any interference and prayed for dismissal of the application.

Before going to further details, let me reproduce the order XIII, Rule 10 of the Code of Civil Procedure :

“10. Court may send for papers from it’s own records or from other courts:-

(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.”

In this context Rule 109 of the Civil Rules and Orders of the Calcutta High Court is also relevant in connection with the provisions of Order XIII, Rule 10, which States when a record is called for, except by Superior Judicial authority or by a civil court acting under order XIII, Rule 10, the court or officer calling for it shall state the circumstances which render it’s production necessary. The Judge may decline to forward it, if in his opinion no sufficient grounds are shown. It is improper and inconvenient that records of courts of justice should be sent to other public officers or functionaries. If a reference to their contents is required, the proper procedure is ordinarily to obtain copies of the requisite papers.

On perusal of both the provisions it is clear that every application made under Order XIII, Rule 10 should be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense

obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

I have gone through the relevant application filed under Order XIII, Rule 10 of the Code of Civil Procedure and on perusal of the said application it is quite clear that such application does not disclose as to why authenticated copy of the portion of the record could not be obtained without unreasonable delay or expense nor he has made out any case in the said application that unless the original is produced the case cannot be proved on behalf of the petitioners herein.

Here the Court below has specifically observed that since exhibit 2 is already on record, he did not find it necessary to call for the entire record from a Senior Court. In view of the Order XIII, Rule 10(2) read with Section 109 of the Civil Rules and Orders, I do not find any perversity in the said order impugned, specially when petitioner failed to convince why copy/copies of the requisite papers(s) will not serve the purpose and/or why entire case record is required to be called for.

Needless to say that the supervisory power under Article 227 of the Constitution can be exercised when order impugned is illegal or irrational or suffering from procedural impropriety. Since the order impugned is supported by reason and the application was not filed in compliance with the provision under Order XIII, Rule 10(2) of the Code of Civil Procedure, read with Section 109 of the Civil Rules and Orders of Calcutta High Court, I do not find any reason to interfere with the order impugned.

C.O. 3421 of 2018 is accordingly dismissed.

However, this order will not preclude the petitioners herein to obtain certified copy of the portion of the record that he is required to be obtained and to place and prove the same in the Title Suit No. 247 of 2015, in support of his contention.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)