

24.2.2023
228,229
Ct. no. 652
sb

C.O. 3115 of 2022

With

CAN 1 of 2023

Debasish Saha & ors.

Vs.

Kazi Asikul Islam & Ors.

With

C.O. 3117 of 2022

Debasish Saha & ors.

Vs.

**Samima Parvin Mondal@ Samima
Parvin & Ors.**

Mr. Rwitendra Banerjee
Mr. Shibasis Chatterjee
Mr. Debduitta Pathak ...for the petitioner

Mr. Uday Narayan Betal
Mr. Partha Sarathi Mondal
...for the O.P. nos. 1,6 & 7
in C.O. 3117 of 2022

Mr. Uday Narayan Betal
Mr. Partha Sarathi Mondal
...for the O.P. nos. 1,2 & 3
in C.O. 3115 of 2022

Re: CAN 1 of 2023

This is an application for restoration of order dated 01.2.2023 passed by this court whereby this court was pleased to dismiss the application being C.O. 3115 of 2022, as the petitioner was not represented on that date.

The grounds shown in the restoration application, are sufficient and accordingly, the prayer for restoration is allowed. Let C.O. 3115 of 2022 be restored in its original file and number.

Accordingly, CAN 1 of 2023 is disposed of.

**Re: C.O. 3115 of 2022
with
C.O. 3117 of 2022**

In C.O. 3115 of 2022, this application has arisen in connection with Title Suit no. 205 of 2022 pending before the court of learned Civil Judge, (Junior Division), Additional court at Krishnanagar, Nadia where opposite party No. 1 has prayed inter alia for a declaration that plaintiff and the defendants are joint owners in respect of 'A' schedule property and the plaintiff is owner of 'B' schedule property to the plaintiff and also for a declaration that the power of attorney described in Schedule 'C' to the plaintiff is void and also for permanent injunction. In this application, the petitioner has sought for transfer of said suit which is presently pending before the court of learned Civil Judge, (Senior Division) 2nd Court, at Krishnanagar to the court of learned Civil Judge at Jangipur, Murshidabad, having jurisdiction, to try the suit. In support of the transfer, the petitioner has contended that the cause of action of the said suit arose within the jurisdiction of Jangipur court as the impugned power of attorney was executed and registered at Jangipur. Moreover, all principal defendants being nos. 1 to 4 of that suit, are the residents of Murshidabad. He further submits that the witnesses of the said suit also reside in Jangipur, Murshidabad and as such the suit should be transferred to the court at Jangipur.

Murshidabad. In this context, he relied upon judgments reported in (2008) 3 SCC 659 and (2010) 8 SCC 401.

On the other hand, in C.O. 3117 of 2022 petitioner has sought for transfer of Title suit no. 199 of 2022 from the court of learned Civil Judge, Senior Division, 2nd court, Krishnanagar at Nadia to the court of learned Civil Judge, Senior Division at Jangipur, Murshidabad. In the said suit, the plaintiffs have prayed for passing preliminary decree for partition determining that the plaintiffs are owner to the extent of 15.48 decimal of land in the schedule mentioned property to the plaintiff.

Learned counsel for the petitioner submits that the subject matter in issue in C.O. 3115 of 2022 is directly related with the subject matter of Title suit no. 199 of 2022, because the ultimate result of that suit for declaration have direct impact upon the fate of the title suit no. 199 of 2022. The opposite party herein with a mala fide intention filed two suits in two different courts and as such there is every possibility of conflict of judicial opinion and as such he has sought for transfer of both the suits in the court at Jangipur.

Having considered the facts and circumstances of the case, it is admitted position that the subject matter of the partition suit in title suit no. 199 of 2022 is within the jurisdiction of learned Civil Judge, Senior Division, 2nd Court, at Krishnanagar. Considering the fact that the title suit for declaration being Title suit no. 205 of 2022

has admittedly direct bearing upon the title suit no. 199 of 2022, I am of the view that it would be just and proper that both the suits are required to be heard analogously to avoid multiplicity of proceeding and conflict of decisions.

However, I do not find any reason to allow the prayer made by the petitioner where he has sought for transfer of both the suits from the court of learned Civil Judge, Krishnanagar to the court of learned Civil Judge, Jangipur, Murshidabad, considering the fact that it is not in dispute that the subject matter of the partition suit being Title suit no. 199 of 2022 situates within the jurisdiction of District-Nadia, PS-Kalianagar, Mouza-Mira. Now Section 16(b) of the code of civil procedure provides that the suit for partition to be instituted where the subject matter of such immovable property situates. Accordingly, it was instituted in the court of learned Civil Judge, Senior Division, Murshidabad. When the statute specifically creates jurisdiction in case of a partition suit, then mere convenience of the parties may not enough for the exercise of power under section 24 of the code, unless it is shown that refusal of such prayer will amount to denial of justice.

In view of above, learned District Judge, Kirshnanagar at Nadia is hereby directed to withdraw the Title Suit no. 205 of 2022, from the court of learned Civil Judge, Junior Division, Additional Court at

Krishnanagar and to transmit the same within a period of three weeks from the date of communication of the order to the court of learned Civil Judge, Senior Division, 2nd court, Krishnanagar, Nadia for analogously trial with Title suit 199 of 2022.

The transferee court shall serve fresh notice upon both the parties intimating the next date of hearing before proceeding further with the aforesaid suits and learned transferee court will continue the proceeding in connection with transferred suit with the partition suit at the stage where the suits reached till date.

The department is directed to send a copy of the order to the learned District Judge, Nadia at Krishnanagore immediately.

As submitted by the learned counsel for the petitioner that most of the witnesses and principal defendants of Title suit no. 205 of 2022 resides within Jangipur area, if any of the principal defendants or their witnesses are not able to come to attend the court on a particular date, they can always apply for exemption and such application will undoubtedly be considered by trial court on it's merit.

Accordingly, C.O. 3115 of 2022 and C.O. 3117 of 2022 are disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)