

December 15, 2023
Sl. No.6
Court No.19
s.biswas

CO 3199 of 2022

Anupam Ghorai and others

vs.

Ashis Das and others

Mr. Tanmoy Mukherjee

Mr. Manoranjan Jana

Ms. Mitali Jana

Mr. Souvik Das

Mr. Rudranil Das

... for the petitioners

Mr. Sounak Bhattacharya

Mr. Sounak Mandal

Mr. Abhirup Halder

... for the opposite parties

By the order impugned, the learned Civil Judge (Senior Division), Kakdwip, South 24 Parganas, held that the issue as to whether the suit was barred by the principles of res judicata, could not be decided as a preliminary issue. Mixed questions of law and facts were involved and the matter required recording of evidence.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioners submits that once the learned court had framed the preliminary issue, it was the bounden duty of the court to decide the same. Mr. Mukherjee further submits that the court ought not to have framed the issue at all, if such was the opinion of the court that the preliminary issue could not be decided on the basis of the judgment and decree passed in a prior suit.

Mr. Bhattacharya, learned advocate for the plaintiffs/opposite parties submits that the court did not commit any error of jurisdiction, while deciding

the issue, inasmuch as, the court did not negate the contention of the defendants that the suit was barred by the principles of res judicata. The court postponed the hearing of the issue.

This court is of the view that the learned court below did not commit any error of jurisdiction in passing the order impugned. The court was of the view that elaborate evidence would be required to be adduced. The issue should be decided at the time of trial.

Mr. Mukherjee contends that the defendants are being unnecessarily dragged into a legal battle, although the title of the vendor of the plaintiffs had been negated by a competent civil court. Thus, the suit deserves expeditious consideration by the court. However, as the learned court was of the view that the issue had to be decided on the basis of evidence, for the ends of justice, this court fixes the time limit for adjudication of suit. All pending applications shall be disposed of, upon allowing the parties opportunity to contest the same, within a period of three months from the date of communication of this order. Upon disposal of the said applications, issues shall be framed. The issue whether the suit is barred by res judicata, should be decided as the first issue, amongst other issues. The entire suit shall be

disposed of within a year, from the date of communication of this order, mandatorily.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)