

12.10.2023
Court No. 19
Item No.14
CP

C.O. 3800 of 2022

Shyamal Kanti Mondal & anr.
Vs.
Amal Kanti Mondal & ors.

Mr. Goutam Das
Ms. Priyanka Mondal

... for the petitioners.

By order dated September 29, 2022, passed in Title Suit No. 348 of 2017, the learned Civil Judge (Senior Division), Chandernagore, Hooghly, rejected the application filed by the plaintiffs seeking withdrawal of the suit. The court allowed transposition of the defendant nos. 1 and 2 to the category of the plaintiffs. The plaintiffs were transposed to the category of defendants.

The suit is for partition. After seven years of adjudication of the suit, the plaintiffs prayed for withdrawal of the same on the ground that another suit was pending. No particulars and details were provided. Till the said suit was disposed of, the partition suit should not proceed.

The learned court considered and rejected such prayer of the petitioners. All the defendants raised objections with regard to the application for withdrawal of the suit. The objections of the defendants were taken into account. The defendants

also filed an application for transposition of the defendant nos. 1 and 2 in the category of the plaintiffs and transposition of the plaintiffs to the category of defendants. The defendants contended that the defendant nos. 1 to 7 had filed their respective written statements and they were all co-sharers. They all prayed for a preliminary decree in respect of the shares.

It is surprising to note that after a lapse of seven years, the plaintiffs prayed for withdrawal of the suit. According to the defendants, the plaintiffs wanted to deprive the co-sharers from their legitimate share. The defendant nos. 1 and 2 expressed their willingness to continue with the suit, so that the shares of all the co-sharers could be divided, in accordance with law. The plaintiffs filed a written objection to the application for transposition and contended that Title Suit No. 130 of 2018 was pending before the learned Civil Judge (Senior Division), Serampore, Hooghly between the same parties and another Title Appeal No. 75 of 2016 was pending before the learned Additional District Judge, Chandernagore.

The learned court went through the plaint of the Title Suit No. 130 of 2018 and arrived at the conclusion that the suit was neither between the same parties nor were the reliefs claimed, similar.

From the plaint in Title Suit No. 570 of 2013, the court found that the suit was not for partition. The said suit was dismissed and the Title Appeal is pending from the said dismissal.

In view of admissions made in the plaint, the plaintiffs were stopped from withdrawing the suit. The suit is one for partition. Every co-sharer has the same status. Thus, after seven years from institution of the suit, when the parties had contested and prayed for passing of a preliminary decree in respect of the shares, the suit was rightly not allowed to be withdrawn. The defendant nos. 1 and 2 were rightly transposed in the category of plaintiffs, to continue with the suit.

The revisional application is accordingly disposed of without any interference.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)