

M/L 17+18
09.10.2023
Court. No. 29
Sourav

**CO 3884 of 2022
With
CO 3886 of 2022**

**Jayed Bibi & Ors.
Vs.
Sirajul Haque Mondal & Ors.**

Ms. Adrisnata Chakraborty

*...for the petitioner in
CO 3884 of 2022.*

Mr. Sourav Sen

*...for the petitioner in
CO 3886 of 2022.*

Mr. Mainak Bose

Mr. Amitabh Ray

Mr. Rishabh Karnan

...for the opposite parties.

1. Since by an order dated 04.01.2023 as passed in CO 3886 of 2022 both the instant two revisional applications have been directed to be listed together and since in both the revisional applications almost self-same orders have been impugned, this Court proposes to dispose of the instant two revisional applications by a common order.
2. In CO 3884 of 2022, the order no. 129 dated 14.09.2022 as passed by the learned Civil Judge (Senior Division) 1st Court at Barasat, North 24 Parganas in Title Suit No. 4 of 2004 has been impugned. Similarly, in CO 3886 of 2022, the order no. 68 dated 14.09.2022 by the self-same trial Court in Title Suit No. 502 of 2013 has been impugned.
3. By the aforesaid two orders, the learned Trial Court in aforesaid two suits has been pleased to reject the petitions under Sections 151 of the Code of Civil Procedure praying for analogous hearing of Title Suit No. 4 of 2004 and Title

Suit No. 502 of 2013 as filed by the plaintiffs of the aforesaid two suits. Both the plaintiffs of the aforementioned suits felt aggrieved and thus, preferred the instant revisional applications.

4. In course of hearing, Ms. Adrisnata Chakraborty, learned advocate for the plaintiffs/revisionists in CO 3884 of 2022 and Mr. Sourav Sen, learned advocate for the plaintiffs/petitioners in CO 3886 of 2022 conjointly draws the attention of this Court to the two certified copy of the impugned orders as passed by the learned Trial Court in the aforesaid two suits.
5. Attention of this Court is also drawn to plaint of Title Suit No. 4 of 2004 and plaint of Title Suit No. 502 of 2013 as filed before the learned Trial Court. It is argued by Ms. Chakraborty and Mr. Sen, learned advocates for the petitioners of the instant two revisional applications that from the cause title of the aforesaid two suits, it would reveal that in both the suits; the parties are identical as well as the schedule of properties of the aforesaid two plaints are equally identical.
6. It is further argued by them that in both the suits though the plaintiffs are different but they have filed the said two suits for partition of the identical suit properties. It is thus, argued by Ms. Chakraborty and Mr. Sen, learned advocates for the revisionists of the instant two revisional applications that learned Trial Court while passing the impugned orders has measurably failed to consider those facts and wrongly rejected the petition for analogous

hearing solely on the ground that cause of action for the said two suits are not identical. Ms. Chakraborty and Mr. Sen, learned advocates for the petitioners of the instant two revisional applications thus submit that it is a fit case for allowing the instant two revisional applications by directing the learned Trial Court to hear out Title Suit No. 4 of 2004 and Title Suit No. 502 of 2013 analogously in order to avoid chance of passing of conflicting judgments.

7. While opposing the prayer of the petitioners of the instant two revisional applications, Mr. Mainak Bose, learned advocate for the opposite parties of the instant two revisional applications also draws attention of this Court to the schedule of the complaints of Title Suit No. 4 of 2004 vis-à-vis Title Suit No. 502 of 2013. It is contended by Mr. Bose that though in both the suits, plot numbers of the schedule mentioned properties are identical but the extent of land covering the said plot numbers are different.
8. It is thus argued by Mr. Bose, learned Counsel for the opposite parties that in view of such difference of extent of suit properties in the schedule of complaints of the both the suits, it cannot be said that schedule of the aforementioned two suits are same and identical.
9. Mr. Bose, in course of his argument also draws his attention to the written statement with counterclaim as filed by his client Sirajul Haque Mondal in Title Suit No. 4 of 2004 before the learned Trial Court. It is submitted by Mr. Bose that by filing counterclaim, the said Sirajul

Haque Mondal who is one of the defendants in both the suits have sought for declaration and injunction against the parties of the said two suits in respect of some portions of the plot numbers which are part and parcel of the schedule of the plaint of aforesaid two suits. Mr. Bose thus submits that learned Trial Court while disposing the said two applications under Section 151 of the Code of Civil Procedure as filed in Title Suit no. 4 of 2004 and Title Suit No. 502 of 2013 rightly came to a finding that no case has been made out for analogous hearing of the aforesaid two suits.

10. It is further submitted by Mr. Bose, learned advocate for the opposite parties in both the two instant revisional applications that the aforesaid two applications for analogous hearing in both the aforementioned suits have been filed only to frustrate the counterclaim as made by his client(s) in Title Suit No. 4 of 2004.
11. This Court has meticulously gone through the contents of the instant two revisional applications. Admittedly, almost by two identical orders, both the applications under Section 151 of the Code of Civil Procedure for analogous hearing of the aforementioned two suits have been rejected by the learned Trial Court. This Court has also gone through the plaints of the aforementioned two suits including its cause title, prayer portions and the schedules of the plaint of two suits. This Court has also gone through the written statements filed by defendant no. 1, Sirajul Haque Mondal along with his counterclaim

as well as the prayer portion of the said counterclaim and the schedule of the counterclaim.

12. Admittedly, as rightly pointed out in the impugned order that parties to the both suits are same and identical. It also reveals to this Court that in both the suits for partition the suit plot numbers are identical though their extent varied. It reveals further to this Court that defendant no. 1, Sirajul Haque Mondal in Title Suit No. 4 of 2004 has prayed for declaration and injunction in respect of the suit properties which are situated in the self-same plot numbers which are subject matter of both the aforementioned suits.
13. In view of such, this Court finds that in the event this Court directs the learned Trial Court to dispose of the Title Suit No. 4 of 2004, the counterclaim as filed by Sirajul Haque Mondal in Title Suit No. 4 of 2004 and Title Suit No. 502 of 2013 analogously that would prevent multiplicity of suit as well as that would help in avoiding chance of passing of conflicting judgments touching the right, title and interest of the parties of the aforesaid two suits.
14. In considered view of this Court, difference of cause of action cannot stand in the way in disposing the aforesaid two suits and the counterclaim analogously as wrongly held by the learned Trial Court.
15. in view of the discussion made hereinabove, this Court thus finds sufficient merits in both the aforementioned revisional applications and, accordingly, the instant two

revisional applications being **CO 3884 of 2022** and **CO 3886 of 2022** are allowed on contest.

16. Consequently, the order no. 129 dated 14.09.2022 as passed in Title Suit No. 4 of 2004 and order no. 68 dated 14.09.2022 as passed in Title Suit No. 502 of 2013 by the learned are hereby set aside.
17. Consequently, both the petitions as filed under Section 151 of the Code of Civil Procedure, as filed in the aforesaid two suits stand hereby allowed on contest.
18. The learned Civil Judge (Senior Division) 1st Court at Barasat, North 24 Parganas is directed to dispose of Title Suit No. 4 of 2004 and Title Suit No. 502 of 2013 analogously, of course, after completion of the formalities of service of summons upon the defendants and giving them reasonable time for filing their written statements and, thereafter, by framing common issues in both the suits.
19. With the aforementioned observation, the instant two revisional applications being **CO 3884 of 2022** and **CO 3886 of 2022** are disposed of but considering the facts and circumstances of the present two cases without any order as to costs.
20. Parties are directed to act upon the server copy of this order duly downloaded from the official website of this Court.

21. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)