

17.7.2023
ct. 236
sk,sl. 19

C.O. 3909 of 2014

In the matter of : Kali Prasad Kundu & Ors.

Mr. Soumik Ganguly
Mr. Supriyo Shasmal
...for the petitioners.

This application impeaches to Order No. 86 dated 3rd April, 2014 passed by the learned Civil Judge (Junior Division), 1st Court, Bankura in Title Suit No. 51 of 2005.

Heard Mr. Ganguly, learned counsel for the petitioners.

None is appearing on behalf of the opposite parties.

Mr. Ganguly, learned counsel for the petitioners assailing the impugned order submits that the petitioner never admits the opposite parties as their landlords while defending the suit for eviction under the Transfer of the Property Act. Another suit being Title Suit No. 167 of 2004 filed by one Santosh Kumar Singh seeking declaration of ownership over the identical property buttresses the stand of the petitioners/defendants. As the said suit was filed in the year 2004 and the suit for eviction was filed in the year 2005 an application under Section 10 of the Code of Civil Procedure was filed by the petitioners/defendants before the learned trial court seeking order of stay of

the proceeding for eviction in Title Suit No. 51 of 2005 till the disposal of Title Suit No. 167 of 2004.

Learned trial court by the order impugned elaborately discussed the two different natures of the suit where parties are also not identical and rejected the prayer of the defendants seeking order of stay.

Mr. Ganguly submits that since the ownership is in dispute and there is no relationship between landlord and tenant between the parties, the issue may be decided by holding analogous trial of both the suits.

Section 10 of the Code of Civil Procedure says:-

“Stay of Suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in 1[India] having established or continued by 2[the Central Government] 3[***] and having like jurisdiction, or before 4[the Supreme Court].

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in 1[India] from trying a suit founded on the same cause of action”.

Admittedly Title Suit No. 51 of 2005 is a suit for eviction and Section 116 of the Evidence Act does not permit the tenant to challenge the title of the landlord whether there is a relationship of landlord and tenant between the parties can be very well decided by learned trial court. Since the suits are different in nature and parties are not identical. I do not find any reason to accept the contention of Mr. Ganguly to direct the learned trial court to hold the analogous trial of Title Suit No. 51 of 2005 along with Title 107 of 2004.

The impugned order does not warrant any interference.

The revisional application is dismissed.

Let a copy of this order be sent down to the learned trial court for information and necessary action.

(Siddhartha Roy Chowdhury, J)