

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

C.O. 115 OF 2022

03 10.4.2023
Sc Ct. no.2

Smt. Sima Roy (Mukherjee)

Vs.

Sri Sekhar Dey & Ors.

Ms. Suman Sehanabis (Mandal)

.... For the Petitioner/Plaintiffs

Affidavit-of-service, filed in Court today, is taken on record.

This is an application filed under Article 227 of the Constitution of India.

From the endorsement made by the Registry, it appeared that no caveat was lodged.

It appeared from the affidavit-of-service that, pursuant to the direction made by a coordinate Bench on **November 10, 2022**, notice had duly been served upon the opposite parties.

The ***order impugned in this application was passed on April 22, 2022 by the learned Civil Judge (Junior Division), Additional Court Sadar, Cooch Behar.*** A Title Suit being ***Title Suit No. 19 of 2014*** was filed by the petitioner being the plaintiff therein before the learned trial court, inter alia, seeking a ***declaration for cancellation***

of three individual registered sale deeds executed in the years 2004 and 2006 respectively along with other consequential prayer for declaration of title in favour of the plaintiff/petitioner, at page 26 to the revisional application.

The written statement filed by the defendants/opposite parties clearly contained an averment, *inter alia*, at ***paragraph 12 thereof, at page 31 to the revisional application*** that, those ***three registered indentures/sale deeds*** were executed by ***Nareswar Karjee*** and ***Dineswar Karjee*** respectively in favour of the defendants/opposite parties. On the strength of the said plea, the defendants/opposite parties contended that, they being the absolute right, title and interest holders of the suit property, the claim of the plaintiffs/petitioners would not sustain in law and fact.

Ms. Suman Sehanabis (Mandal), learned counsel appearing for the plaintiffs/petitioner had referred to an ***appellate decree dated January 25, 1990 passed by the court of the learned Additional District Judge, Cooch Behar in Title Appeal No. 20 of 1963 arising out of Title Suit/ Case No. 23 of 1962*** and submitted that, by virtue of the said Title Appeal it was declared that, the

Karjees' did not have any right, title or interest over and in respect of the suit property and it was the predecessors of the plaintiffs/petitioner herein who had the right, title and interest on the suit property.

Learned counsel for the plaintiffs/petitioner further submitted that, this title appeal was decided between the predecessors of the present petitioner herein and the predecessors of the present opposite parties herein.

Ms. Sehananabis (Mandal) further submitted that, the appellate decree was never challenged in any manner and as a result, the same is still holding the field.

Learned counsel for the plaintiffs/petitioner then referred to the applications filed by the defendants/opposite parties under **Order 1 Rule 10 of the Code of Civil Procedure 1908 at pages 36, 37 and 38 to this revisional application** and submitted that, through the said applications for addition of parties the present defendants/opposite parties in the pending **Title Suit No. 19 of 2014 sought to implead the said Karjees again who were named in paragraph 12 to their written statement as necessary and proper parties in the suit.**

By virtue of the said impugned order dated April 22, 2022, all such three applications were

taken up together and were allowed by the learned trial court.

Learned counsel for the plaintiffs/petitioner further submitted that, the suit has come at its last stage of hearing and the written objection filed on behalf of the plaintiffs/petitioners at **page 39 to this revisional application** specifically showed all the relevant points taken by the plaintiffs/petitioners to resist the claim of the defendants/opposite parties for addition of parties. Learned counsel for the plaintiffs/petitioner submitted that, the witness action in the said pending title suit had been concluded and the suit is pending at its final argument stage.

Learned counsel for the plaintiffs/petitioner also submitted that, at this belated stage those applications for addition of parties were nothing but a ploy to delay the hearing of the suit. This, according to the learned counsel for the plaintiffs/petitioner is not permissible in law.

Learned counsel for the plaintiffs/petitioner further submitted that, in view of the prevailing appellate decree dated **January 25, 1990** the predecessors-Karjees having lost their right over the suit property, a clear right, title and interest of the predecessors of the plaintiffs/petitioner having been established and crystallized on the suit

property, those applications for addition of parties, would not have been entertained and should have been dismissed at the threshold.

Despite notice, the defendants/opposite parties chose not to be represented.

After considering the submissions made on behalf of the plaintiffs/petitioner and on perusal of the materials on record, this Court is of the view that, the registered indentures/sale deeds of which cancellation had been sought for by the plaintiffs/petitioners in the pending ***Title Suit No.19 of 2014*** and since a plea had been raised by the defendants/opposite parties in support of their defence in the written statement that, by virtue of the said alleged three indentures/sale deeds the suit property was purchased by the present defendants/opposite parties and they sought to establish the right, title and interest on the basis of the said documents, this Court is of the view that, the Karjees, the alleged sellers of the suit property for whom the impleadment in the pending title suit was sought for, should be allowed to participate at the final trial of the suit to adjudicate upon the claims and rival claims on the suit property.

In exercise of power under Article 227 of the Constitution of India, this Court has a very limited authority to exercise its jurisdiction. This Court

would only be concerned about scrutiny of the impugned order, whether any jurisdictional or procedural error is apparent on the face of the record and/or the impugned order.

The contentions raised on behalf of the plaintiffs/petitioner that having been defeated in the previous title appeal, the appellate decree dated **January 25, 1990** had already been crystallized declaring that, the predecessors-Karjees did not have any right, title and interest can well be taken as a plea by the plaintiffs/petitioner at the time of trial of the said pending title suit, in presence of the Karjees.

Hence, this Court is of the firm opinion that, ***there is no infirmity in the impugned order dated April 22, 2022*** and, as such, the same requires no interference.

However, the learned trial judge is requested to complete the procedures and conclude the hearing of the said ***Title Suit No.19 of 2014*** pending before it, strictly in accordance and with law with utmost expedition and positively within a period of one year from the date of communication of this order, without granting any unnecessary adjournments to any parties.

It is made clear that, this Court has not gone into the merits of any claim or rival claim of the

parties to this revisional application and the learned trial court shall be free to decide the said title suit with its own independent mind but in accordance with law and without being influenced by any observation made herein.

The parties shall be at liberty to urge all the points before the learned trial court.

On the terms and with the observations, as above, this revisional application being **C.O. 115 of 2022** stands disposed of without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)