

01-05-2023
Court No.3
Sh/47.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

C.O. 130 of 2022

Smt. Anima Mondal.
-Vs-
Sri Kalipada Sarkar.

Mr. Saumojyoti Dutta,
Mr. Bijoy Sarkar

..For the Petitioner.

Affidavit of service filed in Court today be taken on record. In spite of service the opposite party is not represented.

This is an application under Article 227 of the Constitution of India against order No.8 dated 19th September, 2022 passed by learned Civil Judge Junior Division, Jalpaiguri in Title Suit No.347 of 2022. By the impugned order the learned Court below was pleased to reject the defendants application under Section 10 of the Code of Civil Procedure.

The petitioner contended that the opposite party herein filed a suit for decree of permanent injunction to restrain the defendant from entering into the suit property and/or from disturbing the plaintiff from peaceful possession of the suit land along with other reliefs before the Civil Judge Junior Division, Jalpaiguri in Title Suit No.347 of 2022.

The opposite party appeared in the said suit and instead of filing written statement he filed an application under Section 10 of the Code, alleging that

a Title Suit being No.190 of 2012 has been pending before the trial Court in between husband of the petitioner, Bidesh Mondal and one Dulali Majumdar and that in the said suit PW-1 has been examined and cross examined and during pendency of the said suit Bidesh Majumdar transferred the land to his wife and the present defendant is the attorney holder of the earlier suit, i.e, being Title Suit No.190 of 2012 and that the subject land of Title Suit No.347 of 2022 is subjudiced in the earlier suit being Suit No.190 of 2012 and accordingly prayed for stay of the later suit, that is, Title Suit No.347 of 2022.

The petitioner filed his written objection against the said application stating that no suit is pending between the petitioner and the opposite party nor the Title Suit being No.190/2012 is in between the petitioner and the opposite party in any manner whatsoever.

Furthermore, the suit property in Title Suit No.190 of 2012 is in respect of three bighas of land recorded in the R.S. Khaitan no.3318/2 whereas the suit property in title Suit No. 347 of 2022 is in respect of 1.66 acres or 5 bighas of land recorded in the R.S.Khaitan No.1893 corresponding to LR Khaitan No.419 of mouza Berubari. Accordingly, the suit property in both the suit is different.

He further submits that the title of the petitioner as contended in Title Suit No.347 of 2022 is derived from the father-in-law of the petitioner who purchased the same by deed no.854 on 06/02/1956 and that no suit is pending in respect of the property purchased by

the aforesaid deed. He further submits that the parties and cause of action of both the suits are different and that written statement has not yet been filed in the later suit and as such the petition is premature one but the Court below allowed the said application.

Mr. Dutta, learned counsel appearing on behalf of the petitioner further submits that the trial Court has erred in allowing the said application under Section 10 of the Code and has exercised jurisdiction not vested in it and if it is allowed to stand it would occasion failure of justice and will cause irreparable injury to the petitioner. He further submits that the Court below failed to appreciate that the area of land involved in both the suits are different and the matter in issue is different and the issues in the later suit is yet to be framed.

Learned Court below also failed to mention that in the earlier suit being Title Suit No.190 of 2012 declaration of title has not been sought for and in that suit the prayer for permanent injunction was only made therein. The parties of both the suits are not same and accordingly, the Court below ought to have rejected the prayer for stay filed under Section 10 of the Code.

Learned counsel for the petitioner submits, however for the interest of justice both the suits may be heard analogously.

Learned counsel for the petitioner in support of his contention has relied upon a judgment of the Apex

Court in the case of *Aspi Jal V. Khushroo Rustom Dadyburjor* (2013) 4 Supreme Court Cases 333, to support his contention that if the cause of action of two suits are different then the stay cannot be granted under Section 10 of the Code.

On a perusal of the order impugned it appears that learned Court below in its finding has stated about ingredients to attract Section 10 of the Code and then jumped to a conclusion that Section 10 of the Code of Civil Procedure does fulfill the ingredients mentioned by him and as such he allowed the application under Section 10 of the Code. Learned Court below has not discussed how the ingredients of Section 10 of the Code has been fulfilled in the present context when the plaintiff in his objection has specifically stated that the parties are not the same and the matter in issue in the second suit is not directly and substantially in issue in the first suit and when the property involved in both the suits are not same and cause of action of both the suits are also different.

Having considered the facts and circumstances of the case and the submissions made by learned counsel for the petitioner it appears that the learned Court below was not justified in coming to a conclusion that the ingredients of Section 10 of the Code has been fulfilled without assigning reason as to how he satisfied himself for granting of stay. The well-settled principle of law is that the reason is the soul of every order and any order passed by the Court should ordinarily be supported by reasons because the reasons express the thought process of the Court which weigh with the Court to pass such order. Mere

quoting of ingredients of Section 10 does not amount to reason. An order without reasons is a body without soul.

Considering the discrepancy in description of the suit property in both the suits in terms of its boundary as well as area and Khaitan number and also in terms of different cause of action, I find that the Court below was not justified in passing the order impugned.

The order impugned dated 19th September, 2022 passed in Title suit No.347 of 2022 is hereby set aside. Learned Court below is directed to make analogous hearing of the Title Suit No.347 of 2022 along with Title Suit No.190 of 2012 and to dispose of both the suits at the earliest without granting any unnecessary adjournments to either of the parties, preferably within a period of 12 months from the date of communication of this order.

C.O. 130 of 2022 thus, accordingly, disposed of.

Photostat certified copy of this order, if applied for, be supplied to the learned advocate appearing for the petitioner expeditiously subject to compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)