

OD-5

ORDER SHEET

ALP/8/2022

IN THE HIGH COURT AT CALCUTTA
Extra Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

DR. VIJAY KUMAR KEJRIWAL
Versus
SMT. SUDHA AGARWAL AND ORS.

BEFORE:

The Hon'ble JUSTICE AJOY KUMAR MUKHERJEE

Date : January 13, 2023.

Appearance:

Mr. Sukrit Mukherjee, Adv.

Mr. Ovik Sengupta, Adv.

Mr. Arindam Paul, Adv.

Ms. Parna Mukherjee, Adv.

...for petitioner.

Mr. Aniruddha Mitra, Adv.

Mr. Sabyasachi Sen, Adv.

...for the respondent no.s 2 and 4

Mr. Shuvasish Sengupta, Adv.

Mr. Soumyajit Mishra, Adv.

...for the respondent no.3

The Court: This is an application under Clause 13 of the Letters Patent, 1865 seeking transfer of T. S. No.16 of 2018 from the court of Learned Civil Judge (Sr. Div.), 5th Court at Alipore to this Hon'ble Court.

The petitioner contended that in the year 2010 the petitioner filed T. S. No.2778 of 2010 before the Court of the Learned 2nd Civil Judge (Sr. Div.) at Alipore seeking partition of the suit property and subsequently the said suit was

transferred to the Court of the Learned 5th Civil Judge (Sr. Div.) at Alipore and the same was renumbered as T. S. 16 of 2018.

The defendants have appeared in the said suit and are contesting.

The trial on evidence of the petitioner and the erstwhile defendant no.1 in connection with the instant suit as on date stands completed. However, it is the respondent no.2, whose cross-examination that had commenced way back in the year 2017, stands yet to be concluded due to the various dilatory tactics adopted by the respondent no.2 with a view to cause inordinate delay in adjudicating the suit. It is also submitted by the petitioner that the defendants in their written statement have stated that Flat No.3A was purchased in the joint names of the plaintiff and the defendant and the consideration shown in the name of the plaintiff, in fact, provided by defendant no.1. The defendants in the written statement have also reiterated that Flat Nos.3A in the joint names of plaintiff and the defendant no.2 and 3B was purchased by the defendant no.1 along with defendant no.3. The plaintiff does not have any right, title and interest in any manner whatsoever in respect of Flat No.3B. The petitioner further submits that in spite of admitted share of the parties in the suit property, the suit for partition in respect of schedule mentioned properties to the plaintiff gets delayed due to various reasons. In such circumstances, it is necessary that the suit being T. S. No. 16 of 2018 pending before the Learned 5th Civil Judge (Sr. Div.) at Alipore and all other applications in connection therewith be transferred to this Hon'ble Court in exercise of extraordinary original jurisdiction and that the same to be heard and tried by this Hon'ble Court, in the wake of the fact that there has been no progress in the hearing of this instant suit before the said court below, due to

the repeated frivolous adjournments granted by the said court to the respondent no.2, due to the reason whereof the hearing and adjudication of this instant suit has been kept in abeyance despite the fact that an order dated 11th October, 2018 had been passed by the Learned District Judge as also the order dated 10th July, 2015 passed by this Hon'ble Court in terms whereof it had been directed that the said court should dispose of the instant suit as expeditiously as possible preferably within a period of six months from the date of communication of such order of this Hon'ble Court.

Learned counsel appearing on behalf of the respondent nos. 2 and 4 submits that the plaintiff has got no right, title, interest in the property and as such he has no locus standi to file this application for transfer and as such the application for transfer is not maintainable and liable to be rejected in limine. He further submits that delay in trial cannot be treated as sufficient ground for making transfer and respondent nos.2 & 4 are not responsible for the delay caused in the suit.

Learned counsel for the respondent no.3 supports the case of the plaintiff and he prays that for the interest of expeditious disposal of the suit, the prayer made by the plaintiff should be allowed.

I have considered the submissions made by both the parties. It appears that the application for transfer has been sought for on the ground of inordinate delay in disposing of the aforesaid suit, when according to the plaintiff/petitioner, the share in the schedule mentioned properties to the plaintiff is not in dispute.

In view of the aforesaid facts and circumstances of the case, I find it expedient for the ends of justice to make a direction upon the court where the

suit is presently pending to make every endeavour for the expeditious disposal of the suit as the suit is pending since 2010.

In view of the above, ALP/8/2022 is disposed of with a direction upon the learned Civil Judge (Senior Division), 5th Court at Alipore to make all endeavour to have day to day trial invoking Order XVII Rules 1, 2 and 3 of the Code of Civil Procedure, 1908 for expeditious disposal of T.S. No. 16 of 2018 and to dispose of the suit preferably within a period of six months from the date of communication of this order.

ALP/8/2022 is, accordingly, disposed of.

I have made it clear that I have not gone into the merits of the case whatsoever.

(AJAY KUMAR MUKHERJEE, J.)

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