

30.01.2024
Sl. No.7(DL)
srm

C.O. No. 3157 of 2022

Mr. Bibhasaditya Chakrabarty @ Bibhas Aditya Chakraborty

Versus

Udayaditya Chakrabarty @ Uday Aditya Chakraborty & Anr.

Mr. Probal Mukherjee,
Mr. Siddhartha Sankar Mandal,
Mr. Tirthapati Acharyay

...for the Petitioner.

Mr. Abhijit Ray,
Mr. Gautam Roy,
Ms. Piali Banerjee

...for the Opposite Party No.1.

1. Despite service, none appears on behalf of the opposite party No.2. The affidavit of service is taken on record.
2. This revisional application has been filed challenging an order dated September 12, 2022, by which the learned Civil Judge (Junior Division), Additional Court, Sealdah, South 24-Parganas, stayed all further proceedings in Title Suit No.326 of 2021. The court held that the earlier suit, i.e., Title Suit No.78 of 2021, was pending between the same parties on the self-same cause of action. Thus, the decision in the subsequent suit, would operate as *res judicata* in the earlier suit.
3. Mr. Mukherjee, learned Senior Advocate appearing on behalf of the petitioner submits that such finding was

incorrect and the suit for recovery of possession, filed under Section 6 of the Specific Relief Act, had a separate cause of action. The decision in either suit would not operate as *res judicata* in the other suit. According to the Mr. Mukherje, only because parties were same and a part of the self-same property was involved in the subsequent suit, that would not be a ground for stay of the suit for recovery of possession. During the pendency of the partition suit, the petitioner was allegedly dispossessed. Accordingly, the petitioner filed the suit for recovery of possession. Mr. Mukherjee submits that the cause of action in the subsequent suit arose when the dispossession took place. The suit for partition had been filed by the petitioner, against the other brothers. The property belonged to their late father.

4. According to Mr. Mukherjee, the co-ownership is not denied, but the possession which the petitioner was enjoying should be restored till the partition suit is decreed and partition is effected by metes and bounds. Hence, the suit was filed for recovery of the possession after dispossession from two rooms in the ground floor of the premises in question.

5. Mr. Abhijit Ray, learned Advocate appearing on behalf of the opposite party No.1, i.e. the defendant, who had prayed for stay of the subsequent suit, submits that the cause

of action in the two suits, are interrelated. The result of the subsequent suit, will affect the defence case in the partition suit. The police report would indicate that the petitioner had admitted that he was not being allowed to use the two rooms in the ground floor. Thus, the question of dispossession would not arise, as admittedly the petitioner was not in possession of the two rooms in the ground floor. The partition suit was at the stage of hearing of the injunction application and neither the status of the property nor the possession of the two rooms, had not been decided.

6. In the written statement filed in the partition suit, it had been categorically mentioned that the petitioner was not in possession of the two rooms in the ground floor. Moreover, the petitioner had the option of filing an application for restoration of possession in the partition suit itself, but he did not do so. An application for violation of the ad interim order of *status quo* was pending and the grievance of the petitioner could also be adjudicated in the said proceeding.

7. Having heard learned Advocates for the respective parties, this Court is of the view that the grounds on which the suit for recovery of possession was stayed, are not correct. The causes of action in both the suits are different. The decision in one suit would not affect the reliefs claimed in the other suit.

Admittedly, the parties are the same. The properties are the same and the specific allegation of the defendant No.1 is that the petitioner was not in possession of the ground floor rooms, which is fortified by the police report. This Court is of the view that both the suits should be heard analogously, in order to save time and to avoid multiplicity of proceedings and conflicting decisions.

8. The learned District Judge, South 24-Parganas at Alipore, is directed to transfer Title Suit No.326 of 2021 to the Court of the learned Civil Judge (Senior Division) at Sealdah. Title Suit No.326 of 2021, shall be heard analogously with Title Suit No.78 of 2021. Both the suits shall be disposed of expeditiously, preferably within a year, as the parties do not have any dispute with regard to the quantum of their respective shares in the property in question.

9. With the aforesaid directions, the revisional application is disposed of.

10. There shall be no order as to costs.

11. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)