

May 1, 2024
Sl. No.19
Court No.19
s.biswas

CO 3786 of 2022

Ead Ali Molla and another
vs.
Abdul Khabir Molla and others

Mr. Dhananjay Banerjee
Mr. Samrat Choudhury

... for the petitioners

1. Affidavit of service is taken on record. Despite service, none appears on behalf of the opposite parties/defendants.
2. This revisional application arises out of an order dated November 3, 2022 passed by the learned Civil Judge (Junior Division), Kalna, Purba Bardhaman in Title Suit No.07 of 2022.
3. By the order impugned, the learned court allowed the application filed by the defendants under Section 10 read with Section 151 of the Code of Civil Procedure. The defendants prayed for stay of the Title Suit No.07 of 2022, till the disposal of the Title Suit No.10 of 2021.
4. The plaintiffs in Title Suit No.07 of 2022 are the petitioners herein. The claim to be the sons of Golam Ali Molla, and the grandsons of Abdul Ajij Molla. They filed the suit for declaration that the plaintiff no.1 was the owner and possessor of the A schedule property and the plaintiff nos.2 to 4 along with the proforma defendant nos.1 and 2

in the suit were the owners and possessors of the B schedule property.

5. Further prayer was for a declaration that the action of the principal defendants was null and void and the said principal defendants were encroaching into a part of the property which was involved in Title Suit No.7 of 2022.
6. The opposite party nos.1 to 32 as plaintiffs filed Title Suit No.10 of 2021. This is a suit for partition and is pending before the learned Civil Judge (Senior Division), Kalna, Purba Bardhaman. The said opposite parties prayed for partition by impleading the father of the petitioners as the defendant No.1 in the said partition suit, but did not implead the plaintiffs of Title Suit 07 of 2022 as parties. The petitioners claim that their father is neither a necessary party nor a proper party as the property of Abdul Ajij Molla had devolved upon the plaintiffs in Title Suit No.07 of 2022, by deed of gift.
7. Relying on the prayers in Title Suit No.10 of 2021, it has been stated that there is a prayer for declaration that the gift deeds in favour of the plaintiffs in Title Suit No.07 of 2022 (petitioners) were null and void. The plaintiffs in Title Suit No.07 of 2022 did not know about the partition

suit filed by the opposite party nos.1 to 32. Being continuously disturbed by the attempt of the said opposite parties who were encroaching the suit property, they filed the suit in 2022. They came to know about the partition suit when the application for stay was filed. The learned court while considering the application for stay, was of the opinion that if the subsequent suit, i.e., Title Suit No.07 of 2022 was not stayed, it may result in conflicting decisions and multiplicity of proceedings. To avoid such a situation, the learned court stayed the Title Suit No.07 of 2022 filed by the petitioners and two others, who are all sons of Golam Ali Molla and grandsons of Abdul Ajij Molla.

8. Having considered the identity of the suit property, the nature of the claim in the prior suit, that is, the Title Suit No.10 of 2021 as also the identity of the defendant no.1 in the partition suit, this court is of the view that both the suits should be decided analogously in order to prevent wastage of judicial time and also in order to avoid multiplicity of the proceedings and conflicting decisions. As the gift deeds in favour of the petitioners and proforma defendants are under challenge in Title Suit No.10 of 2021, it is

in consonance with the principles of justice that the two suits should be tried together.

9. Thus, the order impugned is modified to the extent that the learned District Judge, Purba Bardhaman shall withdraw Title Suit No.07 of 2022 from the docket of the learned Civil Judge (Junior Division), Kalna and transfer the same to the court of the learned Civil Judge (Senior Division), Kalna, Purba Bardhaman where the Title Suit No.10 of 2021 is pending. The learned Civil Judge (Senior Division), Kalna shall try the two suits analogously.
10. Liberty is granted to the petitioner to correct the cause title.
11. The revisional application stands disposed of accordingly.
12. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)