

04 03.01.2025

Ct-37

ar

**FMA 614 of 2022**

**(Assigned)**

**Ratan Chatterjee**

**Vs.**

**Dilip Banerjee & Ors.**

Mr. Arup Krishna Das  
Mr. Swapan Kumar Chatterjee  
... For the Appellant

Mr. Kishore Mukherjee  
... For the Respondents

1. Affidavit of service filed on behalf of the appellant is taken on record.
2. We have heard the learned counsel appearing for the parties.
3. In a suit for custody of mentally ill person possessing property and custody of his person and management of his property under Section 50 of the Mental Health Act, 1987 since repealed, the plaintiff filed a suit for declaration with regard to the mental illness of one Pampa Chatterjee before the learned District Judge, Paschim Bardhaman, on the basis of the repealed Section. The said suit was dismissed by the learned District Judge on the ground that the Mental Health Act, 1987 was repealed and in view thereof the Court has no jurisdiction to decide the said matter. However, what the learned trial court overlooked is that the suit could have been sent to a Civil Judge to decide such declaratory suit and not to dismiss it

merely on the ground that Section 50 of the repealed Act was mentioned. The substance of the suit was, however, ignored. Section 3(5) of the Mental Health Care Act, 2017 read with Section 105 recognizes the competence of a Civil court to decide such suit by following certain procedures prescribed in such Act. On such consideration, we direct the learned District Judge, Paschim Bardhaman, Asansol, to transfer the said suit to a competent Civil Court to try and determine the suit ignoring the fact that it was filed under the Mental Health Act, 1987, as it appears that Section 50 of the repealed Act is a conferment of jurisdiction upon the learned District Judge and by reason of the repeal of the said Act it is now required to be decided by the competent Civil Court. The declaratory relief is preserved for the competent court to decide.

4. The plaintiff shall remove the heading of the suit in the original suit record on the basis of the order passed by this Court and also shall give valuation of the suit.

5. The appellant shall file an appropriate application for amendment of the plaint before the learned District Judge and after such amendment is carried out the learned District Judge is directed

to assign the matter to any competent Civil Court for adjudication of the suit.

6. In view of the above, the appeal being FMA 614 of 2022 stands disposed of.

7. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.

**(Soumen Sen, J.)**

**(Biswaroop Chowdhury, J.)**