

6.3.2025
Ct. No. 22
Sl.No. 223
samarpita

C.O. 998 of 2023

Sri Uttam Kumar Mandal
Vs.
Sri Sri Manasha Thakurani, represented by
Shebait and herself Smt. Mamoni Mondal
(Das) & ors.

Mr. Amit Baran Dash,
Ms. Ankana Sarkar
..for the petitioner

1. The instant revisional application has been preferred against the order dated 9th March, 2023, passed in connection with Title Suit No. 56 of 2018, by the Court of Learned Civil Judge (Junior Division), 1st Additional Court, Contai, thereby refusing an application preferred under Order 7 Rule 11(d) of the Code of Civil Procedure (*herein after referred to as "C.P.C."*).

2. Mr. Amit Baran Dash, learned Counsel appearing on behalf of the petitioner, by referring to the application made under Order 7 Rule 11(d) of the C.P.C., by the defendant/petitioner has contended that it was filed on the ground that the suit was barred by limitation in terms of Section 59 read with Part IV of The Limitation Act, 1963, and also on the ground of maintainability of the subsequent suit for declaring a compromise decree earlier declaratory suit under the provisions of Order 23 Rule 3 (A) of the C.P.C.

3. It is further submitted on behalf of the defendant/petitioner herein that 03 (three) judgements were relied on. But the learned

Judge did not distinguish the ratio handed down by the Hon'ble Apex Court in those cases.

4. Mr. Amit Baran Dash, Learned Counsel appearing on behalf of the petitioner has further submitted that the learned Judge neither dealt with the issue of limitation, nor dealt with the issue of maintainability in terms of the provision of Order 23 Rule 3(A) of the C.P.C.

5. On careful perusal of the impugned order, it appears to this Court that though the learned Judge recorded all the submissions advanced on behalf of the defendant/petitioner herein but they were not addressed issue-wise.

6. Learned Trial Judge referred to all the cases relied on behalf the defendant/petitioner herein, but did not properly deal with the principals enumerated by the Hon'ble Apex Court.

7. In view of the matter, I'm of the humble opinion that learned Trial Judge did not take into account the principal laid down by the Hon'ble Apex Court in the cases relied on behalf of the petitioner in terms of the provision of Order 23 Rule 3(A) of the C.P.C.

8. Learned Trial Judge also did not deal with the issue of limitation in terms of the compromise decree as well as relevant provision of The Limitation Act, 1963, before forming final opinion of rejecting the application under Order 7 of Rule 11 of the C.P.C.

9. In the aforesaid view of the matter, all the orders impugned in this revisional application, in my opinion, are not supported by reasons in terms of argument advanced on behalf of the parties and, therefore, is not sustainable in eye of the law.

10. Accordingly, the order dated 9th March, 2023 passed in connection with Title Suit No. 56 of 2018 stands set-aside and be placed to the learned Judge to rehear the matter under Order 7 Rule 7 of the C.P.C. and pass a reasoned order after providing opportunity of hearing to the parties to the suit.

11. With the aforesaid observation, this Revisional Application being **C.O. 998 of 2023** stands disposed of.

12. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

13. Urgent certified copy of this order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Bibhas Ranjan De, J.)