

Court No. 6
(265719)

18.06.2025
(AD 2)
(S. Banerjee)

CO 1365 of 2024

Sri Pradip Das & Anr.
Vs.
Putul Das

CAN 1 of 2025

Mr. Amal Krishna Saha
Mr. Indranil Chandra
Mr. Souvik Sarkar

...for the petitioners

Mr. Haradhan Banerjee
Mr. Partha Pratim Mukhopadhyay

...for the opposite party

This matter is appearing under the heading 'Extension of Interim Order'. However, with the consent of both parties the matter is taken up for final hearing by treating the same as on the day's list.

This application under 227 of the Constitution of India is at the instance of the defendant in a suit for eviction of licensee and is directed against an order dated January 3, 2024 passed by the learned learned Civil Judge (Jr. Division), 5th Court at Howrah in Title Suit No. 1212 of 2021.

The opposite party herein filed a suit for eviction, being Title Suit No. 1212 of 2021, upon revocation of license against the petitioners herein. The petitioners herein have filed a suit for declaration

that the plaintiffs and the defendants are joint-owners of an undivided property and for partition and other consequential reliefs which is registered as Title Suit No. 362 of 2022.

The petitioners herein filed an application under Section 10 of the Civil Procedure Code in Title Suit No. 1212 of 2021 praying for stay of all further proceedings of the eviction suit till the disposal of the suit for partition. Such applications stood dismissed by the order impugned. Being aggrieved, the defendants of the suit for eviction have approached this court.

Section 10 of the Civil Procedure Code would apply in a case where the matters in issue in the subsequent suit is directly and substantially in issue in a previously instituted suit between the same parties or between the parties under whom they or any of them claim to be litigating under the same title.

The suit for eviction is a prior suit and the suit for partition is a subsequent suit. Therefore, the provisions under Section 10 of the Civil Procedure Code would not apply to a case of such nature. That apart, the parties of both the suits are different. Excepting the parties in the suit for eviction there are also other parties who have been impleaded in the

suit for partition. The suit property of the two suits are also not identical as only a portion of the suit property involved in the suit for partition is the property involved in the suit for eviction of a licensee.

Mr. Saha, learned advocate appearing for the petitioners would contend that even assuming that the provisions of Section 10 of the Civil Procedure Code may not strictly apply to the case on hand, the court has power to direct analogous hearing of the two suits in exercise of powers under Section 151 of the Civil Procedure Code as some of the issues involved in the suit for partition are also directly and substantially in issue in the suit for eviction of license.

Mr. Banerjee, learned advocate appearing for the opposite parties submits that a direction for analogous hearing cannot be passed in the case in hand as the suits are at different stages.

The suit for eviction of licensee has proceeded to the stage of evidence and a date has been fixed for cross-examination of PW-1 and in respect of the suit for partition all the defendants have not yet been served.

After hearing the learned advocates for the respective parties this court finds that the suit

property of both the suits are not same and identical and considering the fact that the suit for eviction of licensee has proceeded to the stage of evidence and the suit for partition is not yet ready as the summons of the suit has not yet been served upon all the defendants, this court is not inclined to accept the submission of Mr. Saha, learned advocate appearing for the petitioners, for analogous hearing of both the suits.

The learned trial judge has assigned cogent reasons for rejection of the application under Section 10 of the Civil Procedure Code. This court does not find any reason to interfere with the order. Accordingly, CO 1365 of 2024 stands dismissed.

There shall be no order as to costs.

Re: CAN 1 of 2025

This is an application for extension of interim order.

In view of the order passed above, this application has become infructuous and the same is disposed of accordingly.

(Hiranmay Bhattacharyya, J.)