

17.02.2025
Court No. 06
Item No. 49
Cp

C.O. 4389 of 2024

Sonatan Chanda
Vs.
Subhas Mondal & ors.

Mr. Dilip Kumar Sinha
.....for the petitioner.

This application under Article 227 of the Constitution of India is at the instance of the opposite party no. 6 in an application under Section 8 of the West Bengal Land Reforms Act, 1955, and is directed against an order being No.32 dated December 2, 2024 passed by the learned Civil Judge (Junior Division), Additional Court, Ghatal in J. Misc. Case No.1 of 2024 (New).

The petitioner herein filed an application under Section 10 read with Section 151 of the Code of Civil Procedure praying for stay of all further proceedings of the J. Misc. Case till the disposal of the Title Suit No.102 of 2024 pending before the learned Civil Judge (Junior Division), Ghatal.

It is the case of the petitioner herein that he has filed a suit for declaration of title and permanent injunction in respect of the self-same property against the pre-emptor and other co-sharers claiming that the

pre-emptor of this case has no right, title and interest over the suit property.

Learned advocate appearing for the petitioner in course of his arguments has submitted that though the application has been filed under Section 10 of the Code of Civil Procedure praying for stay of all further proceedings in J. Misc. Case No. 1 of 2024, but the Title Suit and the J. Misc. Case are to be heard analogously in order to prevent conflict of judicial decisions.

Petitioner herein transferred the property to the opposite party nos. 12 to 16 herein which is the subject matter of the J. Misc Case No. 18 of 2024 filed at the instance of the opposite party nos. 1 to 11 herein. It is well settled that the transferor is not a necessary party in a pre-emption proceeding. Petitioner who is the transferor has been impleaded as a proforma defendant in the J. Misc Case.

Petitioner filed a Title Suit No. 102 of 2024 for declaration of title and injunction. From the order sheet of Title Suit it is evident that the same was registered only on 29.08.2024 whereas the J. Misc Case was filed on 23.03.2022. Therefore, Title Suit was instituted at a later point of time. No material has been produced before this Court to show the issues involved in Title Suit. In the absence thereof, it cannot be said that the

issues involved in Title Suit is substantially in issue in the J. Misc Case.

The learned Trial Judge rightly noted that the petitioners in J. Misc Case has to prove that he is a non- notified cosharer. It was further recorded that the petitioner herein neither claimed in J. Misc Case that the impugned sale deed is void.

If the pre-emptor succeeds in proving his case, it is the right, title and interest of the transferee which shall vest in the preemptor.

The learned Trial Judge after noting the provisions of Section 10 of the Code of Civil Procedure rightly recorded that the test of applicability of Section 10 of the Code of Civil Procedure is that the decision given in the previously instituted suit would act as *res judicata* in the subsequently instituted suit. The Title Suit has been filed for declaring the right, title and interest of the plaintiff in the suit. The issues involved in the Title Suit cannot be said to be directly and substantially in issue in the application under Section 8 of the West Bengal Land Reforms Act, 1955. The learned Trial Judge applied the correct legal tests for rejecting the application under Section 10 of the Code of Civil Procedure.

The learned advocate appearing for the petitioner in course of his argument placed reliance upon a decision of the Hon'ble Delhi High Court in the case of

C. L. Tandon vs. Prem Pal Singh Rawat & Ors., reported in AIR 1978 Delhi 221, in support of his contention that even if Section 10 of the Code of Civil Procedure does not strictly apply the Court may invoke Section 151 of the Code of Civil Procedure for the ends of justice. In C. L. Tandon (supra), the stay of the latter Title Suit was prayed for on the ground of pendency of a Title Suit between the self-same parties. As the facts the said decision is distinguishable, the same cannot come to the aid of the petitioner.

Since the J. Misc Case is at the stage of evidence of opposite party and the Title Suit is at the initial stage, this Court is not inclined to accept the prayer for consolidation of the two proceedings.

For the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

C.O. 4389 of 2024 stands disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date, upon compliance of usual formalities.

(HIRANMAY BHATTACHARYYA, J.)