

Niladri Dhar Vs Pinaki Dhar**C.O. 3088 Of 2023**

Court: Calcutta High Court (Appellete Side)**Date of Decision:** Oct. 16, 2023**Acts Referred:**

Constitution Of India, 1950 " Article 227#Code Of Civil Procedure, 1908 " Section 10, 151

Hon'ble Judges: Hiranmay Bhattacharyya, J**Bench:** Single Bench**Advocate:** Niladri Dhar, Biswajit Sau, Tapan Kumar Jana**Final Decision:** Dismissed

Judgement

Hiranmay Bhattacharyya, J

1. This application under Article 227 of the Constitution of India is at the instance of the second defendant in a suit for eviction challenging an order

dated August, 16, 2023 passed by the Learned Civil Judge, (Senior Division) 7th Court, at Alipore in Title Suit No. 134 of 2021.

2. By the order impugned, the application under section 10 read with section 151 of the Code of Civil Procedure filed by the petitioner herein stood

rejected.

3. The petitioner appearing in person submits that the opposite party herein filed the suit for eviction upon revocation of licence against the father of

the parties as well as against the petitioner herein. He submitted that prior to the filing of the said suit, the father of the parties filed a suit for

declaration of his one-half share in the suit property and for mandatory injunction against the opposite party herein and his wife. Petitioner submits that

the suit for eviction being the latter suit is required to be stayed till the disposal of the previously instituted suit which is the suit for declaration and

injunction. Petitioner further submits that the Learned Trial Judge instead of considering as to whether the matter in issue in the latter suit is also

directly and substantially in issue in the previously instituted suit rejected the prayer for stay of the suit upon considering only the nature of the two

suits. He further submitted that the latter suit should be stayed even if the causes of action of the two suits are different. In support of such contention,

he placed reliance upon the decision of this Court in the case of Challapaalu Sugars Ltd. Vs. Swadeshi Sugar Supply Pvt. Ltd. reported at AIR 1983

(Cal) 199. He further submitted that he has adopted the written statement filed by his late father and therefore the findings of the Learned Trial Judge

that the defendant no. 2 has not filed any written statement is a perverse finding.

4. Mr. Sau, learned advocate appearing for the opposite party submits that the issues of both the suits are not same. Common questions of law and

fact are also not involved in both the suits. Mr. Sau further submitted that the learned Trial Judge after considering the materials on record rejected the

application for stay by passing a reasoned order and this Court under Article 227 of the Constitution of India should not interfere with such findings of

the learned Trial Judge.

5. Heard the petitioner in person and the learned advocate for the opposite party.

6. Originally the father of the parties namely Tridibesh Dhar, since deceased filed a suit being Title Suit No. 254 of 2019 against the opposite party

herein as well as against his wife. In the said suit the father of the parties prayed for a declaration that he has half share in the property as described

in the schedule of the plaint and for mandatory, injunction, restraining, the, defendants, i.e., the, opposite party and his wife from causing

disturbances to him in the peaceful possession and occupation of the suit property. Subsequently, the opposite party herein filed Title Suit No. 134 of

2021 against his father namely Tridibesh Dhar as well as against his brother i.e., the petitioner herein praying for eviction and recovery of khas

possession.

7. In Title Suit No. 134 of 2021, the opposite party herein claimed himself to be the sole and absolute owner of the suit property by virtue of a

registered sale deed dated 13.12.2000. It is the case of the opposite party herein that the defendants of Title Suit No. 134 of 2021 i.e., the father of the

parties and the petitioner herein approached the opposite party herein to allow them to reside in the property for a limited period of time and based on

such representation, the opposite party allowed them to reside in the ground floor of the suit premises without charging any licence fees. The opposite

party herein claims to have revoked the licence by issuing the notice through his learned advocate and since the defendants in the said suit failed and

neglected to vacate the suit property, he was compelled to file the suit for eviction.

8. The defendant no. 1 in Title Suit No. 134 of 2021 i.e., the father of the parties died in the mean time and after his demise his heirs were substituted.

9. In Challapaalu (supra), the Hon'ble Division Bench held that in the matter of stay of suit under Section 10 the main consideration for the Court

is whether or not the matter in issue in the subsequent suit is directly and substantially in issue in the previously instituted suits.

The Hon'ble Division Bench in the said reports took note of a decision in the case of Bepin Behari Mazumdar vs. Jogendra Chandra Bose

reported at AIR 1917 Cal 248 wherein it was held that the expression "matter in issue" in Section 10 has reference to the entire subject in

controversy between the parties. Bearing in mind the aforesaid propositions of law, this Court shall now consider as to whether or not the

"matter in issue" in the latter suit is directly and substantially in issue in the previously instituted suits.

10. Title Suit No. 254 of 2019 is a suit for declaration of half share in the suit property whereas Title Suit No. 134 of 2021 is a suit for eviction upon

revocation of licence.

11. In the declaratory suit the question involved is whether the original plaintiff i.e., the father of the parties had one half share in the suit property.

Upon the death of the original plaintiff, his heirs have been substituted in the said suit.

12. The opposite party herein claiming to be owner of the suit property by virtue of a registered deed of conveyance filed the suit for eviction. The

question involved in the said suit is whether the defendants were inducted into the property as licensees and also whether such license has been

revoked.

13. Therefore, the scope of enquiry in the two suits are different. The registered deed of conveyance by virtue of which the opposite party is claiming

title to the property is also not under challenge.

14. To the mind of this Court, the matters in issue in the subsequent suit is not directly and substantially in issue in the previously instituted suit. From

the pleadings of both the suits it does not appear to this Court that the decision in the previously instituted declaratory suit shall non suit the plaintiff in

the eviction suit.

15. For the reasons as aforesaid this Court is of the considered view that the eviction suit being Title Suit No. 134 of 2021 cannot be stayed on the

ground of pendency of the declaratory suit being Title Suit No. 254 of 2019. The Learned Trial Judge was right in rejecting the application for stay.

The impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

16. Accordingly, C.O. No. 3088 of 2023 stands dismissed. There shall however be no order as to costs.

17. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.