

(2010) 12 CAL CK 0082

Calcutta High Court

Case No: C.O. No. 2942 of 2009

Sourendra Nath Bhattacharya
and Others

APPELLANT

Vs

Rabindra Nath Bhattacharya

RESPONDENT

Date of Decision: Dec. 10, 2010

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Amal Krishna Saha and Darshan Pal, for the Appellant; Saswata Gopal
Mukherjee and Aiswariya Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Defendants and is directed against the orders dated April 27, 2009 and June 30, 2009 passed by the learned Civil Judge (Junior Division), Third Court, Sealdah in Title Suit No. 360 of 2000 thereby rejecting the prayer for appointment of a handwriting expert and also a prayer for review of the earlier order.

2. The Plaintiff/opposite party herein instituted the Title Suit No. 360 of 2000 praying for a decree of recovery of possession from a licensee after cancelling the licence. In that suit, the Petitioners appeared and they are contesting the said suit by filing a written statement and also by making a counter-claim that they and the Plaintiff are the joint owners in respect of the property in suit, as described in the schedule of the plaint. The said suit was at the stage of recording evidence and the Plaintiff tendered his evidence. During the cross-examination of the P.W.1, certain letters were tendered to the witness and the P.W.1 stated that those letters were not written by him and those does not bear his signature. In that situation, the Petitioners filed an application for appointment of a handwriting expert contending, inter alia, that the signature of the P.W.1 should be taken both in English and Bengali on some papers and such signature and the disputed signatures should be

sent to a handwriting expert for verification. By the first order dated April 27, 2009, the learned Trial judge dismissed the application for appointment of a handwriting expert and by the second order dated June 30, 2009, the learned Trial Judge rejected the application for review of the said order. Being aggrieved, this application has been preferred.

3. Now the question is whether the learned Trial Judge was justified in passing the impugned orders.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the questioned documents are nothing but 7 private letters alleged to have been written by the P.W.1. Those documents are not the germane in the suit. They do not create any title or waive of any right with regard to the suit property by either of the parties but only some personal letters written by the writer of those letters. Since those documents have no bearing with the suit, the learned Trial Judge rejected the same.

5. Upon due consideration of the materials on record, I am of the view that the learned Trial Judge has arrived at a correct conclusion and the findings are not at all perverse. There is no error apparent on the face of the record for which this application should be allowed.

6. It is the observation of the learned Trial Court that this application has been filed only to delay the proceeding. Whatever may be ground of filing of the application, at present I find that since those letters are not the germane to the suit, there is no ground at all for sending the same to a handwriting expert for comparison with the admitted signature of the P.W.1 to be taken subsequently. The orders impugned does not call for any interference at all. If the prayer of the Petitioners is allowed, it will certainly cause delay in the matter of the disposal of the suit, without any fruitful result with regard to the issues of the suit.

7. Accordingly, I am of the view that there is nothing to interfere with the impugned orders. The impugned orders are justified. So, this application fails to succeed. It is, therefore, dismissed.

8. Considering the circumstances, there will be no order as to costs.

9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.