

Title Suit 168/2019
CNR No. WBND070002382019
Present : Rajib Sarkar
JO Code WB01509

Order no:- 13

Dated: 02.05.2023

Today is fixed for hearing of the petition u/s 10 of CPC.

Both the parties are present by filing their respective lawyer's hazira.

The case record of TS. 47/2014 is placed before this court as per the directions in order no. 12. Further, a petition has been filed to call for the case record TS 47/2014 which is infructuous.

Now, the instant petition is taken up for hearing.

The contention of the defendant is that one TS 47/2014 filed by his mother Krishna Saha against the plaintiff of this suit along with another is already pending for adjudication before this court. The relief claimed in such suit is to obtain a decree of declaration of Sale Deed being no. 77/1999 and one adoption deed being no. 124/1978 to be void along with a decree of permanent injunction restraining the defendant no. 1 of such suit ie. the plaintiff herein from disturbing the possession of the mother of the instant defendant ie. plaintiff in such suit. On the other hand, the relief claimed in the instant suit is for eviction of tenant and recovery of such possession. As such, the issues in both the suit shall be directly and substantially the same. Moreover, both the suits have been filed between the same parties. Further, the judgment and decree in TS. 47/2014 may operate as res judicata in TS 168/2019. Hence, the plaintiff prays for staying the proceedings of TS 168/2019 by application of the principle of res sub judice u/s 10 of CPC.

Per contra Ld. Advocate on behalf of the plaintiff submits that in TS 47/2014 the mother of the instant defendant has challenged the adoption deed executed by Kalo Rani Dasi who is admittedly the landlord of the predecessor of the instant defendant. Moreover, on the basis of such adoption deed the suit property was inherited one Mahadeb Sarkar @ Buro ie. the adopted son of the Kalo Rani Dasi and he transferred the suit property by way of registered the Sale Deed to the plaintiff of the instant suit. Such Sale Deed has also been challenged in TS 47/2014. Now, the plaintiff in TS. 47/2014 has challenged both the deeds and the burden of proof to prove her own contention lies upon her as per section 101 of Indian Evidence Act. At this stage, it is admitted that the instant defendant is claiming under Nirmal Chandra Saha ie. the original tenant who died in the year 2001 and therefore, as per the definition of tenant u/s 2(G) of the WBPT Act his tenancy rights have ceased. Moreover, he has not paid any rent before any authority since the original landlord Kalo Rani Dasi died.

This court is of the opinion that firstly, the tenancy rights of the defendant has not yet ceased since it was tenancy for nonresidential purpose and the time limit of five years does not apply in such case. Now, regarding the payment of rent before any other authority it has been clearly mentioned by the defendant that they are ready to pay the rent but only to the lawful claimant. Answer to such question can be found in section 21 of the WBPT Act which says that the tenant had the duty to deposit the rent before the rent controller.

As regards the question of applicability of section 10 of CPC, it is clear that in the instant suit the plaintiff has to prove his right title and interest over the suit property before obtaining a decree of eviction. Such right title and interest has also been challenged in TS 47/2014 and thus the matter in issue is directly and substantially the same. The other ancillary reliefs claimed in both the suits are the necessary outcome of the principle issue ie. the right title and interest of the instant plaintiff. As such, the judgment and decree of TS 47/2014 shall definitely apply as res judicata in the instant suit and therefore, the instant suit is liable to be stayed till the disposal of the TS 47/2014 by application of the principle of res sub judice u/s 10 of CPC.

Hence, it is

Ordered

that the instant petition be and the same is allowed on contest without any order as to cost.

Let TS 168/2019 be stayed till the disposal of TS 47/2014.

D.A is directed to note in relevant register.

Return the record of TS 47/2014.

Fix 11.07.2023 for awaiting final order in TS 47/2014.

Dictated & corrected by me

Sd/-
Civil Judge(Junior Division),
Nabadwip, Nadia

Sd/- R. Sarkar
Civil Judge(Junior Division),
Nabadwip, Nadia