In the Court of District Judge, South 24-Parganas at Alipore

Present :- Sri Rajesh Tamang(WB00757), District Judge I/C,
Misc Appeal no. 219 of 2022
CNR No. WBSP01-010288-2022

Sri Rabindranath Ghosh Appellant

Versus

Smt. Pratima Ghosh & others Respondents

Order no. 01 dated 13.07.2022

The instant Misc. Appeal under order 43 rule 1(r) read with section 151 of C.P.Code is at the instance of the Appellant against the respondents to impeach the order dated 24.06.2022 passed by the Learned Civil Judge (Sr. Divn) 9th Court at Alipore in Misc Case No. 175 of 2016.

Court fees paid by appellant is correct.

Certified copy of the impugned order has been filed.

Register.

Appeal is filed within the period of Limitation.

Appeal is admitted.

No caveat is filed.

Requisite is filed.

At this stage the appellants file an application for stay.

It is submitted that the appellant and the respondents are the co-owners of the schedule property mentioned in the plaint of Title Suit No. 78 of 2012 pending before the Ld. 9th Civil Judge(Sr. Division) at Alipore. It is also stated that the said suit has been decreed on 20.03.2013. It is also stated that the appellant was defendant no.2 in the said suit and had appeared before the Ld. Trial Court on 1st March, 2010 through his Ld. Advocate. The appellant has been advised by the Ld. Advocate that his presence in every date is not necessary and the Ld. Advocate will do all the necessary acts. But the appellant have to appear before the Court to adduce his evidence later. On 17.03.2013 the date has been posted for evidence of P.W.-1 and on that date the corss-examination of PW-1 has been started by the defendant no.2 and could not be completed on the same day and 18.03.2013 was fixed for further cross-examination.

It is further stated that the Ld. Advocate appointed by the appellant, did not take any step on the date fixed and abstained herself from attending the Court without informing the appellant. Thereafter the Ld. Court closed the cross-examination and fixed 19.03.2013 for argument and the judgment has been passed on 20.03.2013 in preliminary form. On 01.09.2015 the appellant has received a notice from Advocate Himadri Chowdhury to attain Survey Commission of the Suit property. On receiving the notice the appellant for the first time came to know about the preliminary decree passed on 20.03.2013. Accordingly the appellant filed a Misc Case being no. 175 of 2016 before the Ld. Trial Court. But the Ld. Court fixed the date for hearing on the point of maintainability and passed the impugned order by dismissing the Misc Case being not maintainable.

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It is also stated that the next date of hearing for petition for drawing of final decree is fixed on 16.07.2022. If the order of Stay is not granted to draw of the final decree, the appellant shall loose valuable right of appeal and also loose a portion of share in the suit property and as the share in the preliminary decree is not correct. Hence, this petition.

After hearing the Ld. Advocate for the appellant I have gone through the case record and the petition for stay of drawing up final decree in Title Suit no. 78 of 2012 and the impugned order in Misc Case no. 175 of 2016. On perusal of the impugned order and documents available on record I did not find any necessity to stay further proceeding of Title Suit No.78 of 2012. More over in the stay petition the prayer of the appellant was to grant stay to the drawing up of final decree till disposal of the appeal and there is no specific suit number of which final decree is to be stayed.

Therefore, the prayer for stay is rejected.

Issue notice.

Fix 1**6.08.2022** for S/R and A/D.

Dictated and corrected by me

Sd/- R.Tamang
District Judge I/C

Sd/- R. Tamang
District Judge I/C
(WB00757)