

OD-3

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

CS/254/2008
ANJANA KHARKIA AND ANR.
VS
SMT. KUSUM JAIN AND ORS

BEFORE:

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date: 11th November, 2024.

Appearance:

Mr. Sarasij Dasgupta, Adv.

... for the plaintiff.

Mr. Rupak Ghosh, Adv.

Mr. Sankarsan Sarkar, Adv.

Mr. Rajesh Upadhyay, Adv.

...for the defendant.

The Court: This matter is appearing under the heading "To Be Mentioned".

The defendants filed an application for revocation of leave under Clause 12 of the Letters Patent. The application was dismissed by the learned Trial Court holding that since part of the cause of action arose within its jurisdiction, the suit is maintainable. Challenging such order the defendant preferred an appeal being APO 39 of 2024.

The copy of the order passed in APO 39 of 2024 is placed on record by the learned Advocate for the plaintiff.

In the aforesaid order, it is directed as follows:

“Considering all the facts and circumstances, there is no point in hearing an appeal on the question whether Clause 12 leave should be revoked. It would further delay the suit. We direct that the learned Trial Judge should frame a specific issue, if not already framed, whether the suit now subsisting involving the Vivekananda Road and Ballygunge Park properties, one property within the jurisdiction and the other outside jurisdiction can be entertained and determined by this Court? We record the submission of Ms. Agarwal for the respondents that her client will not insist on any relief with regard to the Howrah property. The above issue may be tried as a jurisdictional issue. All questions are open before the learned single judge. Upon determination of the jurisdictional issue, it is up to the learned judge to decide whether to proceed further with the suit or to pass any other judgment and order.

We make it clear that since witness action has started it will be concluded before the jurisdictional issue is decided.”

In view of the above order, learned advocate for the plaintiff submits for fixing a date for examination of defendants’ witness.

Mr. Sankarsan Sarkar, learned Advocate for the defendants 1(a) to 3(c) submits date for witness action be fixed in the first week of December, 2024 since Ashok Kumar Kharkia, defendant No. 2, who is to depose, has undergone heart surgery.

In the aforesaid backdrop, let this matter appear on 6th December, 2024 under the heading ‘witness action’.

(BIVAS PATTANAYAK, J.)