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WPA 3925 of 2020
(Via Video Conference)

Mst. Saleha Khatun
Vs.
The State of West Bengal and Ors.

Mr. Arindam Chattopadhyay
Ms. Lipika Thakur Chatterjee
Ms. Sanjukta Samanta
..for the petitioner

Mr. Mahendra Prasad Gupta
..for the State

Affidavit of service filed in court today is kept on record.

The petitioner is represented.

The State is also represented.

After demise of the father the writ petitioner being the only daughter along with her mother, respondent no.12; and two brothers, namely, respondent nos.10 and 11 respectively, are the joint owners of an immovable property in the District Hooghly, under Police Station – Pandua, Mouza – Sarai, J.L. No.39, Khatian No.45 (L.R.) (hereinafter referred to the said property), which is more fully and particularly described in Schedule-A to the plaint filed in Title Suit No.109 of 2018 (for short, the title suit) pending before the learned Civil Judge (Senior Division) 2nd Court, Hooghly Sadar at Chinsurah (Md. Safiuddin Sarkar v.

Rafiquiddin Sarkar and Others). The plaint is annexure P-6 to the writ petition. The parties present before this court have duly confirmed that the said schedule describing the property is correct.

In respect of the said property a partition suit being Title Suit No.109 of 2018, (the said suit) was filed and the same is pending before the learned Civil Judge (Senior Division) 2nd Court, Hooghly Sadar at Chinsurah, now pending before the learned 1st Court.

In the said civil suit an order of status quo was passed on May 2, 2018 with regard to the nature, character and possession of the property and the parties were also restrained not to alienate the same. By another order dated December 12, 2019, the present writ petitioner, who was the second defendant in the original title suit, was transposed as a plaintiff.

The writ petitioner complains of that, by virtue of two separate forged registered deeds of conveyance both registered on June 12, 2019 being Deed No.061601786/2019 and Deed No.061601788/2019, a portion of the property had been transferred by the other co-sharers, namely, the respondent nos.10 to 12 herein. Immediately after coming to learn this fact, the writ petitioner, by her written representation dated June 15, 2019 made a complaint, inter alia, before the Assistant Commissioner of Stamp Revenue,

Government of West Bengal in which the specific prayer of the writ petitioner made, is set out as under:

“That under my above brief status please clear to me about my following raised questions to get proper information and for your necessary steps for rejection of above two noted sale Deed and restrain from any new record and further any transaction under related property of Late Abdul Aziz Sarkar and the property of Mosamma Jamila Khatun which are lying as pending and Court jurisdiction of the above Id. Court as referred in above Title Case No.”

After receiving the said representation/complaint from the writ petitioner the Assistant Commissioner of Stamp Revenue, the respondent no.5 herein, by its communication dated August 28, 2019 forwarded the same to the District Registry, Hooghly with a request to enquire into the matter and to send a report to the concerned Directorate at the earliest.

The writ petitioner claims that such direction of the respondent no.5 was not complied with by the respondent no.6, who was directed to carry out the necessary enquiry and furnish a report.

The writ petitioner once again made another representation dated September 24, 2019 before the respondent no.5.

The writ petitioner now claims, that despite direction of the respondent no.5 as stated above and despite repeated representations being made, the respondent no.6 had failed to make necessary enquiry and report the concerned Directorate in terms of the

said decision of the respondent no.5 dated August 28, 2019. Hence, the present writ petition has been filed.

It is contended on behalf of the writ petitioner that the said two deeds of conveyance are result of fraud. The said two deeds were executed in violation of the order of status quo dated May 12, 2018 and as such the same are nonest in the eye of law. It is further submitted on behalf of the writ petitioner that the respondent no.12, the mother of the writ petitioner, is of unsound mind. Hence, she could not have executed any such deed of conveyance. In any event, if any such deed of conveyance is executed by the respondent no.12, the same should not have any value and binding effect in the eye of law as respondent no.12 is a person of unsound mind.

The learned Advocate appearing for the writ petitioner submits that the present writ petition has been filed with a limited scope just to direct the respondent no.6 to carry out the direction of the respondent no.5 dated August 28, 2019.

Mr. Mahendra Prasad Gupta, learned Advocate representing the State submits that since the Civil Court is in seisin of the matter, all these disputes which require a detailed factual enquiry can only be adjudicated upon by the Civil Court, before whom the writ petitioner at present is a plaintiff. The writ

petitioner can seek necessary reliefs and get necessary directions from the Civil Court. Mr. Gupta further submits that since the same property is the subject matter before the Civil Court, the respondent no.6, irrespective of whatever direction comes to the respondent no.5 is not in a position to decide the issue which pertains to the same immovable property.

After hearing the learned counsels appearing for the parties and after perusing the material before this court, the fact is not disputed that relating to the selfsame immovable property the said title suit is pending before the Civil Court. The writ petitioner is now a plaintiff in the said title suit after being transposed. The issues with regard to the said two deeds of conveyance which are allegedly executed by fraud, as alleged on behalf of the writ petitioner, can also be brought within the scope of the civil suit pending before the trial court by causing necessary amendment in the plaint and the writ petitioner being a plaintiff in the said civil suit can seek necessary consequential directions. Inasmuch as factual disputes are involved in the subject matter of this writ petition. The civil suit is in seisin of the selfsame subject matter. A detailed factual enquiry can only be gone into by the Civil Court in the said pending civil suit. This court in exercise of its high prerogative writ jurisdiction should

not go for such factual enquiry.

From the prayers made before the respondent no.5 in the representation of the writ petitioner as quoted above, it is evident that if the said prayer is carried out pursuant to the direction of the respondent no.5 by the respondent no.6 as claimed in the instant writ petition, the Civil Court's jurisdiction will be usurped, when the Civil Court is in seisin of the issues in which the very same immovable property is involved. This is not permissible in law.

In view of the foregoing discussions and the reasons stated hereinabove, this court finds no merit in the instant writ petition, and as such, WPA 3925 of 2020 stands dismissed.

However, the Court makes it very clear that, this order will not preclude the writ petitioner to take appropriate steps in accordance with law before the learned Civil Court where the title suit is pending.

There shall, however, be no order as to costs.

(Aniruddha Roy, J.)

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