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C.O. 568 of 2021
(Via Video Conference)

Sri Sanjit Jana

-Vs-

Sri Chittaranjan Sarkar & Ors.

Mr. Sanjib Mal,
Mr. Soumen Bhattacharjee

... for the petitioner

Mr. Pinaki Ranjan Mitra

...for the Opposite Parties

Being aggrieved by the order of rejection of application under section 151 Civil Procedure Code, filed by petitioner/defendant no. 3 seeking permission to dispose of a portion of his alleged purchased 32 decimal land from the plaintiff/opposite party no. 1, to meet educational expenses of his child and for his business purpose, by learned Civil Judge (Senior Division), 3rd Court Howrah, in Title Suit No. 507 of 2018 on 11.01.21 has filed this application under Article 227 of the Constitution of India.

Facts necessary for determination of the present application in nutshell is that, the plaintiff no. 1 has claimed that he is not an educated person but who knows only to sign his name was/is an absolute owner

of the entire A Schedule property measuring 4.77 acres of land. The defendant no.1 being his trusted man he engaged him to look after his such property and for the said purpose he executed a power of attorney in favour of defendant no. 1 and also to defend him in Title suit no.16552 of 2014 filed against him by the defendant no.3 in respect of some property deal which took place between him and defendant no.3 sometime in the month of March 2014.

Later it has come to his notice that the defendant no. 1 most illegally inserted some clauses in power of attorney empowering himself the right to dispose of the property of the plaintiff no. 1 described in the Schedule A. On the strength of such illegal power of attorney the defendant no. 1 transferred more than 4 acres 37 decimals land in the name of his own mother the defendant no. 2. The plaintiff never received any consideration money against such transfer of his land in favour of defendant no. 2.

It has also come to his notice that defendant no. 1 has most illegally transferred another 31:95 decimal of land in favour of the defendant no. 3 too by executing registered deeds. He has alleged that defendants in conspiracy and in collusion with each other managed to procure registered deeds in respect of B schedule property, the possession of which is still with him and also all original deeds pertaining to the schedule

properties. Thus he has filed Title Suit No.507 of 2018 for declaration of his title and interest over Schedule A and for cancellation and declaration that sale deeds dated 28.01.2016 executed by the defendant no1 in favour of the defendant nos.2 & 3 in respect of Schedule B property are illegal void and not binding upon him. He has also prayed for permanent injunction against the defendants restraining them from interfering with the peaceful possession of plaintiff over the suit property or from alienating, encumbering or changing the nature and character of the schedule B property.

While the defendant no.3 has alleged that plaintiff is a land broker and he executed a valid registered power of attorney in favour of the defendant no.1 after taking the entire consideration money for B schedule property. The plaintiff himself had sold a portion of land of Plot no. 6531 and entered into an agreement for sale of remaining land of the said plot with the defendant no.3, but when the plaintiff failed to execute a deed then this defendant no.3 had to file Title Suit no.16552 of 2014 and at that time the plaintiff appointed defendant no.1 as his constituted power of attorney. The plaintiff received the consideration money for entire A schedule property from the defendant no.1 when he executed the power of attorney on 30.09.15 and which he later revoked on 06.05.2016.

The defendant no.3 after purchase mutated his name and has been paying rent to the Government and has also obtained electric connection on his purchase land from the plaintiff.

The plaintiff has obtained an order of temporary injunction in the form of status quo against the defendants restraining them from transferring, alienating, encumbering and creating any third party interest in respect of suit property and from changing the nature and character of the same till disposal of the suit.

That being aggrieved by such order of injunction, the defendant no.3 has preferred an appeal before this Hon'ble High Court being no. FMAT 1063 of 2019/FMA 1566 of 2019. Hon'ble Division Bench has been pleased to modify the order of injunction dated 7th September 2019 and excluded 32 decimals land alleged to have been purchased by the defendant no.3 from the purview of the injunction order and gave liberty to the defendant no.3 to dispose of 32 decimal land or any part of it and create third party interest over the same, but after taking necessary permission from the learned trial court.

The defendant no.3 on the strength of such order of Hon'ble Division Bench order has filed the impugned application under section 151 CPC seeking permission to dispose of a part of 32 decimal land, but learned

court below rejected the same with the findings that sale deed on the basis of which the defendant no.3 claims his right to dispose of is under challenge and also to avoid multiplicity of proceedings.

At the time of hearing learned advocate for the petitioner/defendant no.3 submitted that there is no bar in transferring a portion of the petitioner's purchased 32 decimal land as the purchaser shall be bound by the decree of the court in view of section 52 of the Transfer of Property Act, 1882. He also submits that petitioner is a bona fide purchaser for value and who have purchased 32 decimal land on payment of Rs. 37 lacs and which is apparent from the deeds itself and from the bank statements of the petitioner. There is no bar to transfer his purchased property.

He in support of his such contention has referred to *Sanjay Varma vs. Manik Roy & Ors*, reported in AIR 2007 SC 1332 and *Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. & Ors*, reported in AIR 2013 SC 2389.

He also submits the defendant no.3 is in financial difficulties. That in order to meet educational expenses of his child in good educational institution and for his business purpose he has no other option but to dispose of a portion of his purchased 32 decimal land.

The facts and circumstances of the above cited decisions are entirely different from the present one as

present case is not for specific performance of contract, rather for cancellation of deeds of the defendant nos.2 & 3 for having obtained by practicing fraud upon plaintiff by the defendant no.1.

It is true the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. Section 52 Of Transfer of Property Act, 1882 does not annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. And it is equally settled law that relief under section 52 of the Act of 1882 is based on justice, equity and good conscience.

In the present case the basis on which the defendant no.3 has claimed to have acquired interest is under challenge and alleged to have been procured by practicing fraud without payment of consideration. The deeds of the defendant no.3 is alleged to be collusive one. No doubt, the defendant no.3 by producing bank statements has been able to show transfer of Rupees Four lacs in the name of the plaintiff on 20.03.2014 and another Rupees Four lacs vide four different cheques on 20.01.2016, in total Rupees Eight lacs. He has also filed money receipts dated 30.12.2015 and 01.01.2016 bearing signatures alleged to be that of plaintiff. There

is nothing on record to show how and in what manner the defendant no.3 paid remaining consideration money to the plaintiff. The deed in question was registered on 28.01.2016.

Since the plaintiff has alleged that he never received any consideration money against the sale made in favour of the defendant no.3 by the defendant no.1. Therefore, those money receipts bearing signatures of the plaintiff produced by the defendant no,3 may have to face judicial scrutiny and may need to be examined by an expert. When the sale deed of the defendant is under challenge, then it would not be prudent on the part of the court of law to permit the petitioner/ defendant no.3 to transfer any portion of the land covered by the disputed deed as there will be no end to litigation and every possibility of delay in delivery of justice. In case the plaintiff succeeds in obtaining a decree then he will have to face uphill task to get the decree executed, if third party interest is allowed to create over the subject matter of the dispute.

Therefore, this court does not find any infirmity, illegality or material irregularity in the impugned order.

Accordingly, revisional application being **C.O.568 of 2021 is dismissed** and connected application, if any, is disposed of.

Interim order, if any, stands discharged.

However, considering the nature of dispute and facts and circumstances of the case, the learned court below is requested to dispose of the case as expeditiously as possible giving preference by fixing short dates and without giving adjournments to either of the parties without reasonable cause.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(**Kesang Doma Bhutia, J.**)