

24
SK
Ct. No. 18
06.09.2021

**C.O. No. 2313 of 2018
(Via Video Conference)**

**Jitendra Prasad Shukla
Vs.
Biswajit Nandy & Ors.**

Mr. Surajit Nath Mitra, Sr. Adv.,
Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. D. Ganguly,
Mr. K. Bhattacharya ... For the petitioner.

Affidavits of service filed by Mr. Mukherjee, learned counsel appearing on behalf of the petitioner are kept on record.

None appears on behalf of the opposite parties inspite of service.

The instant application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in a suit for declaration and injunction and is directed against order dated June 28, 2018 passed by the 3rd Court of learned Additional District Judge at Howrah in Misc. Appeal No. 1206 of 2014 thereby affirming the order No. 27 dated August 18, 2014 passed by the 2nd Court of learned Civil Judge, (Junior Division) at Howrah in the said suit being Title Suit No. 278 of 2012.

Mr. S. N. Mitra learned senior counsel appearing on behalf of the petitioner submits that his client has purchased the suit property on May 17, 2005 by a

registered deed of conveyance on valuable consideration, the plaintiff by filing the connected suit is now trying to avoid the said deed on the allegation that taking advantage of his minority the defendant nos. 1 and 2, his brother and mother have illegally executed the said deed.

Mr. Mitra submits that such a suit in terms of Article 60 of the Limitation Act, 1963 is required to be filed within three years from the date when the minor attains majority. He argues that the plaintiff was born on August 11, 1988 and the suit has been filed in the year 2012 i.e. long after the expiry of the said period of limitation, the suit, therefore, is not maintainable being barred by limitation on the face of it and in aid of such a suit no injunction can be granted but the learned Trial Judge even after noticing the said situation by the Order No. 27 dated August 18, 2014 allowed the application filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure and the appeal Court below mechanically affirmed the said order of the learned Trial Judge.

Mr. Mitra, in support of his aforesaid contention refers to the decisions of the Hon'ble Supreme Court in the case of ***Narayan Versus Babasaheb & Ors.***, reported in ***(2016) 6 SCC 725*** and in the case of ***Murugan & Ors. Versus Kesava Gounder (dead) through Legal Representatives & Ors.***, reported in ***(2019) 20 SCC 633***.

Heard Mr. Mitra, perused the materials-on-record.

The plaintiff in the suit has prayed for the following reliefs:

- a. A decree for declaration that the plaintiff is the owner of 1/3rd undivided Share of the suit property (which is morefully described in the Schedule – A);*
- b. A decree for declaration that the Deed of Conveyance (which is morefully described in the Schedule – B) is illegal, invalid, null and void instrument and same is not binding upon the plaintiff;*
- c. A further decree for declaration that by the said Deed of Conveyance (which is morefully described in the Schedule – B), the defendant no. 1 has no right, title and interest in the suit property;*
- d. A decree for permanent injunction restraining the defendant no. 1 and 2 from transfer, dispose, alienate and/or encumber and also from changing nature and character of the Schedule – A property;*
- e. Cost;*
- f. Any other relief or reliefs the plaintiff is entitled;*

It is rightly submitted by Mr. Mitra that the limitation for filing of a suit of such nature is governed by the Article 60 of the Limitation Act, 1963 and the decisions of the Hon'ble Supreme Court cited by him also support his such contention.

A suit to avoid a deed of transfer of the assets of a minor on the allegation that it was executed by practicing fraud upon the minor, in terms of the

aforesaid Article 60 of the said Act of 1963 is required to be filed within three years from the date when the minor attains majority.

In the present case the learned Trial Judge in the Order No. 27 dated August 18, 2014 records that *after considering the birth certificate that plaintiff took birth on 11.08.1988 and the alleged deed was executed by the defendant nos. 2 and 3 on 31.03.2005 on which day the plaintiff did not attain the majority* but passed an order of injunction restraining the defendants from transferring or alienating the suit property and changing the nature and character of it till disposal of the suit without addressing the issue of maintainability of the said suit which ought to have been addressed inasmuch as the existence of the prima facie case is dependent upon the affirmative outcome on the said issue in favour of the plaintiff.

The cardinal principle for grant of a temporary order of injunction is that no order of injunction can be passed in aid of a suit which is not maintainable.

The appeal Court below has acted with material irregularity in affirming the order of the learned Trial Judge without dealing with the said issue of maintainability of the said suit, although raised specifically by the petitioner.

The decrees of declaration, sought for in the suit are not sufficient to avoid the said deed of sale which

also disentitles the plaintiff to get the protection of an order of injunction pending disposal of the said suit.

Summing up the discussion made above, this Court is of the opinion that the order impugned is not sustainable and is accordingly set aside.

The application filed by the plaintiff in the suit under Order XXXIX Rules 1 and 2 of the Code is dismissed.

C.O. 2313 of 2018 is thus allowed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)