

ORDER SHEET
GA 2 OF 2018
GA 1950 OF 2018
CS 247 OF 2017
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SHANKAR PRASAD GARGA
Versus
THE REGISTRAR OF ASSURANCES, KOLKATA

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 21ST January, 2021.

Appearance:
Mr. Rhdrabed Chowdhury, Adv.
Mr. Tapan Sil, Adv.
Mr. Javed K. Sanwarwala, Adv.
For the Petitioner

Mr. Paritosh Sinha, Ld. A.O.R
For the State/Respondent/ RA Kolkata

The Court: By this application, the proforma defendant seeks dismissal of CS No.247 of 2017.

Learned Advocate appearing for the proforma defendant submits that, two of the parties in the present suit, were litigating in CS No.43 of 1989, CS No.501 of 1976, CS No.684 of 1986, CS No.228 of 1984 and CS No.324 of 1987. Such five suits were tried and decreed on September 12, 2014. Five appeals were carried against such decree. Such appeals being APD No.234 of 2016, APD No.235 of 2016, APD No.236 of 2016, APD No.237 of 2016 and APD No.238 of 2016 were disposed of by a judgment and order dated February 14, 2020.

Learned Advocate appearing for the proforma defendant draws the attention of the Court to the direction contained in the judgement and order of

the Appeal Court. He submits that, the appeal Court directed that, the plaintiff herein prays the proforma defendant a consideration of Rs.9,44,69,457/- on the valuation made by the Registrar of Assurance together with 10% simple interest thereon for the period commencing from January 1, 2010 till the date of the preliminary decree and thereafter further 10% simple interest per annum from the date of the preliminary decree till payment which has to be tendered on March 20, 2020.

The appeal Court directed that on such tender being made, the proforma defendant will convey their right, title and interest in respect of the immovable property concerned to the plaintiff on March 20, 2020. In default, the Registrar, Original Side, High Court, Calcutta shall execute the conveyance.

Learned advocate appearing for the proforma defendant submits that, apart from anything else by the judgement and order dated February 14, 2020, the appeal Court fixed the valuation of the share of the proforma defendant in the immovable property concerned. Consequent upon such fixation the valuation of the entire property can be ascertained. The parties are bound by the valuation so fixed by the Appeal Court. A special leave petition was preferred against the judgement and order dated February 14, 2020 before the Hon'ble Supreme Court of India which was disposed of on June 15, 2020 by not interfering with the order of the Appeal Court. A review petition was filed before the Hon'ble Supreme Court which was dismissed on September 1, 2020.

Learned Advocate appearing for the proforma defendant submits that, subsequent to the decree dated September 12, 2014, and during the pendency of the appeal the plaintiff filed the instant suit praying for declaration that the determination of the market value as on August 12, 2009 as communicated by

the letter dated August 9, 2017 by the defendant No.1 is incorrect and unlawful. He submits that, the prayers made in the present suit, do not survive the judgement and order dated February 14, 2020 passed by the appeal Court.

According to him, the appeal Court fixed the valuation of the share of the proforma defendant in immovable property concerned. The valuation of the entirety of the property can be deduced from out of the valuation of the share of the proforma defendant. He points out that, in the present suit, the plaintiff is seeking fixation of the valuation of the share of the proforma defendant in the immovable property. Such valuation was fixed by the defendant No.1 as communicated by the letter dated August 7, 2017.

The judgement and order of the appeal Court dated February 14, 2020 being subsequent to the fixation of the valuation by the defendant No.1 and subsequent to the present suit being filed by the plaintiff, he submits that, the plaintiff cannot receive a higher or a better claim or in fact any other claim other than the valuation of the share of the proforma defendant as fixed by the appeal Court.

The plaintiff and the defendant No.1 are represented.

Learned Advocate appearing for the plaintiff submits that, the Court should be pleased to permit the plaintiff to file an affidavit dealing with the allegations made in the petition. He submits that, in the suit, the plaintiff seeks fixation of valuation of the share held by the proforma defendant. Such exercise is required to be done on completion of trial. Therefore, at this stage, no relief should be granted to the proforma defendant.

Learned Advocate-on-Record representing the defendant No.1 in the suit submits that, the written statement of the defendant No.1 is ready. In the event,

the Court is pleased to fix the valuation of the share of the proforma defendant in terms of the valuation fixed by the appeal Court, then, the Court should observe that the allegations made in the plaint are not admitted by the defendant No.1.

As noted above, five suits were disposed of by a decree dated September 12, 2014. The plaintiff and the proforma defendant were the parties to the five suits decreed on September 12, 2014. Five several appeals were carried against the decree dated September 12, 2014. All of such five appeals were disposed of by the judgement and order dated February 14, 2020 passed by the appeal Court. Special Leave Petition filed against the same was dismissed on June 15, 2020. Review petition was dismissed by the Supreme Court on September 1, 2020.

The immovable property concerned in the five suits was premises No. 78, Rafi Ahmed Kidwai Road, Kolkata. Right of pre-emption plaintiff to purchase the share of the proforma defendant in the suit property was recognized by the decree dated September 12, 2014. The plaintiff made the application under Section 4 of the Partition Act, 1893 exercising his right of pre-emption on August 12, 2009. The decree dated September 12, 2014 directed valuation of the property by the Registrar of Assurances. The plaintiff applied for valuation of the property. The Registrar of Assurances by a letter dated August 7, 2017 communicated the valuation to be Rs.9,44,69,457/-. The plaintiff filed the instant suit challenging the valuation.

In the appeal Court, one of the issues of the appeal was what would be the valuation of the shares of the proforma defendant in the suit property. The decree dated September 12, 2014 allowed the plaintiff herein to exercise right of pre-emption in respect of the shares of the proforma defendant held by such proforma defendant in respect of an immovable property. The appeal Court, did

not interfere with such direction. Since, the valuation was directed to be fixed by the Registrar of Assurances by the decree dated September 12, 2014, the appeal Court by the judgement and order dated February 14, 2020 fixed the valuation itself. The share of the proforma defendant in the immovable property concerned was fixed at Rs.9,44,69,457/-. The relevant passage of the appeal Court fixing the valuation as also the manner and method of payment and the consequence of default are set out below :

“I would hold that Woodland was entitled to enjoy the benefit of this money from the date of receipt of the consideration till date. This is reasonably assessed at 10% per annum simple interest.

In those circumstances, it would be just and proper and subserve the interest of justice if Shankar pays to Woodland the consideration of Rs.9,44,69,457/- on the valuation made by the Registrar together with 10% simple interest thereon for the period commencing from 1st January, 2010 till the date of this preliminary decree and thereafter, further 10% simple interest per annum from this date till payment which has to be tendered on 20th March, 2020, Woodland will convey their right, title and interest in the said property to Shankar, on 20th March, 2020. On default by Woodland, the Registrar, High Court, Original Side shall execute the conveyance by 30th April, 2020.

On the default of Shankar this suit would be placed before the learned single judge for passing of a preliminary decree of partition. I pass a preliminary decree, accordingly.”

During the pendency of the appeal, and in the time between the decree dated September 12, 2014, the defendant No.1 purported to fix a valuation of the

shares of the proforma defendant in the immovable property concerned. Such fixation of valuation which was communicated by the writing dated August 7, 2017 of the defendant No.1 is under challenge in the present suit. The present suit apparently, was verified on October 31, 2017, and was filed in 2017 itself. The suit is till pending.

However, as noted herein the appeal Court by the judgement and order dated February 14, 2020 fixed the valuation of the share of the proforma defendant in the suit property. The appeal Court accepted valuation of the share of the proforma defendant as communicated by the defendant No.1 dated August 07, 2017.

In such circumstances, since the appeal Court fixed the valuation of the share of the proforma defendant at Rs.9,44,69,457/-, the plaintiff in the instant suit at best can receive a decree for the valuation of the share of the proforma defendant in the immovable property concerned, at Rs.9,44,69,457/- as on August 12, 2009 and no other sum for such date. Therefore, the valuation of the share of the proforma defendant in the immovable property concerned as on August 12, 2009 as fixed by the appeal Court by the judgement and order dated February 14, 2020 is final between the parties herein.

In such circumstances, in my view, interest of justice should be sub-served by disposing of I.A. GA No.2 of 2018 old GA No.1950 of 2018 in CS No.247 of 2017 by decreeing CS No.247 of 2017. The valuation of the shares of the proforma defendant in the immovable property concerned is fixed at Rs.9,44,69,457/- as on August 12, 2009.

An application for dismissal of the suit, is to be considered on the basis that the statements made in the plaint as true and correct. Taking the

statements in the plaint as true and correct then also, the relief claimed by the plaintiff can be granted only in the manner as appearing from the appeal Court's judgement and order dated February 14, 2020 and no other.

In view of the proposition of law that, an application of the present nature is to be considered on the strength of the pleadings in the plaint the parties are not invited to file any affidavit.

Since the entire suit is disposed of, the requirement to file written statement by the defendants are dispensed with.

(DEBANGSU BASAK, J.)

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