

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. No. 220 of 2019

Kenaram Pramanick

Vs.

Shital Betal & Ors.

(Via Video Conference)

For the petitioners:

Mr. Mahammad Mahmud

Mr. Sk.I. Alam

Mr. Pinaki Das

For the opposite parties:

Mr. Nilanjan Bhattacharjee

Mr. Arpan Guha

Heard on:

03.02.2022

Judgment on:

10.03.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order dated January 4th 2019, passed by the Learned Civil Judge (Junior Division), 4th Court, Howrah in Title Suit No. 235 of 2013, present petitioner/plaintiff preferred this Revisional

Application under Article 227 of the Constitution of India. By the impugned order learned Trial Court was pleased to reject plaintiff's prayer for recalling plaintiffs' witness No.1.(PW1).

2. Plaintiffs' case in a nutshell is that plaintiffs instituted Title Suit No. 235 of 2013 contending *inter alia* that the schedule mentioned suit property to the plaintiff, belonged to Shib Chandra Pramanick and Ananta Kumar Pramanick and while they were in absolute possession of the same, they sold it to Atul Chandra Pramanick and Anukul Chandra Pramanick by registered deed dated 28th February, 1970. After purchase they got possession and while they were in possession, they sold the said suit property to the plaintiff by executing deed dated 01.02.1975 and delivered possession to the plaintiff and since then plaintiff is in absolute possession of the same. During L.R. attestation, the suit schedule property was recorded in the name of plaintiff but in the final publication, 12 decimal of land in plot No. 414 was wrongly recorded in the name of Atul Chandra Pramanick and taking advantage of erroneous recording, Atul Chandra Pramanick and his agents and legal heirs of Anukul Chandra Pramanick are trying to take forcible possession of the said schedule property and in this connection two cases being Title Suit No. 163 of 2005 and Misc Case No. 14 of 2010 are still pending before the learned Civil Judge (Junior Division), 4th Court, Howrah. During pendency of the aforesaid Misc Case No. 14 of 2010 in connection with Title Suit No. 163 of 2005, Atul Chandra Pramanick since deceased, allegedly executed a power of attorney in favour of defendant No. 2 to 5 and on the basis of said power of attorney defendant No.2

to 5 on behalf of Atul Chandra Pramanick executed a deed of sale in favour of defendant No.1 on 18.11.2005, but the plaintiff was not aware about the said deed. Few months back, some persons with vested interest along with defendants came to the suit plot and claimed that they have purchased 13.5 decimal of land in plot No. 414 and are threatening that they would dispossess the plaintiff from the schedule mentioned suit property. Atul Chandra Pramanick, since deceased, executed the said deed by exercising fraud, misrepresentation, undue influence and said deed was never acted upon. So, the plaintiff filed the said suit for declaration and permanent injunction.

3. The defendants No.1 contesting the said suit by filing written statement and denied all material allegations and contended *inter alia* that the plaintiff already sold out his property so he has no right title interest in the property and as such defendant prayed for dismissal of the suit. In the said suit evidence of plaintiff i.e. PW1 & 2 are completed and the evidence on behalf of DW1 is also completed.

4. When the cross examination of defendant was going on, it was found that some necessary fact regarding the purchase of the property by Atul Chandra Pramanick from Shiv Shankar Pramanick and Ananta Kumar Pramanick, by deed of sale dated 28.02.1970 are required to be proved by recalling the PW1 and without taking into cognizance about the said two deeds, the actual right title of the parties cannot be determined and the suit cannot be properly adjudicated.

5. It has been contended by learned counsel for the appellant that for the purpose of incorporating the details of said two deeds in the plaint, plaintiff filed an application for amendment under Order VI Rule 17 of Civil Procedure Code (C.P.C.) and learned Trial Court after hearing both the parties rejected the said amendment application on 23.11.2017. Challenging the said order, plaintiff/petitioner filed a revisional application being C.O. No. 255 of 2018 before this court, which is heard along with this application.

6. Defendant/respondent filed a written objection against plaintiff's said application for recalling PW1 and denied all material allegations and contended that the plaintiff illegally trying to produce the said documents, in order to exhibit the same and this application has been filed only to delay the proceeding and therefore, prayed for rejection of said application. Learned Trial Court after hearing both the parties, was pleased to reject the plaintiff's prayer for recalling PW1 by passing the impugned order dated 04.01.2019, with the observation that at the time of adducing evidence as DW1, defendant No.1 had failed to produce the deed for the year 1978 and the defendant No.1 is supposed to face the outcome of non-production of the said deed and for this purpose, PW1 is not required to be recalled to prove said deed No. 792 for the year 1978 and in respect of the deed no. 737 for the year 1972, learned Trial Court held that said deed no. 737 has not been relied upon by either of the parties in their respective pleadings and though reference has been made in respect of the deed No. 739 for the year 1970, but no reference has been made about deed No. 737 for the year 1970 in the plaint.

7. Being aggrieved by the said order dated 04.01.2019 plaintiff /appellant preferred this revisional application on the ground that both the deeds being No. 737 and 792 relate to the suit property and court is required to take cognizance upon the said two deeds for determining the real issue in controversy and for proper adjudication of the suit. Deed number has been wrongly typed in the said recalling application as “739” instead of “737”.

8. At the time of hearing learned counsel for appellant submits that plaintiff all along pleaded that Shiv Chandra Pramanick and Atul Chandra Pramanick were the original owners of the suit property and they sold the same in favour of Atul Chandra Pramanick and Anukul Chandra Pramanick by registered deed dated 28.02.1970 and said Atul Chandra Pramanick sold the suit property in favour of the plaintiff by deed dated 01.02.1975. On perusal of the copy of the deed dated 01.02.1975 it appears that there is reference about the deed dated 28.02.1970 but the plaintiff could not collect certified copy of said deed, though said deed is very much relevant for adjudication of the case. Now the plaintiff has collected the certified copy of the said deed No. 737 dated 28.02.1970 which is necessary to be produced for marking it exhibit, reference of which has been made in the plaint. Similarly in order to show that defendant did not acquire title by dint of deed No. 792 for the year 1978, said deed is also required to be proved.

9. Respondents’ points for objection is that defendant No. 1 filed his written statement on 31.03.2014 and since then till 10.12.2018, the plaintiff did not intend to produce the said documents. Their further case is that

plaintiff previously on 11.07.2017 filed one application under Order VI Rule 17 read with section 151 of the Code of Civil Procedure for amendment of plaint wherein plaintiff alleged that the defendants fraudulently procured a sale deed from Atul Chandra Pramanick and said alleged sale deed for the year 1978 is void, due to the reason that no permission was obtained from the learned District Judge , Howrah. Upon contested hearing the said application for amendment was rejected and thereby the plaintiff being estopped from production of such document because the same is beyond pleading of the plaintiff. Further contention of the respondent is that either in the plaint or in the written statement there is no whisper in connection with any sale deed bearing no. 737 for the year 1970 and accordingly without any pleading to that extent, court has no jurisdiction to exhibit the said document by recalling the PW1 and he has filed the present application only to drag the proceeding.

10. Both the parties claim that they have derived their title from Atul Chandra Pramanick and in view of the fact as discussed in C.O. No. 255 of 2018 prayer for amendment has been allowed in connection with deed dated 28.02.1970 in the name of Atul Chandra Pramanick and Anukul Chandra Pramanick, and as such plaintiff's prayer for recalling PW1 is required to be allowed only to prove that deed dated 28.02.1970. However, plaintiff prayer for recalling PW1 to prove defendant's deed No. 792 for the year 1978 is rejected, in view of the fact that said portion of amendment was disallowed by a competent the court earlier and as such it is barred. In this context I am agreeable with the observation made by the trial court that deed No. 792 for

the year 1978 was relied upon by the defendant in support of his case but at the time of adducing evidence defendant did not produce the same and as such, outcome of non production of the sale deed by defendant No.1 shall be adjudged at the time of final of hearing of the suit and for that purpose PW1 is not required to be recalled.

11. In view of above C.O. 220 of 2019 is allowed in part. Plaintiff will be at liberty to recall the PW1 to prove deed dated 28.02.1970 but plaintiff is not allowed to recall PW1 to prove defendant's deed number 792 for the year 1978. If the PW1 is recalled as above, learned Trial Court will give opportunity to the defendant to cross examine plaintiffs witnesses and defence witness will also get the opportunity to adduce evidence in connection with aforesaid admission of deed No. 737 dated 28.02.1970 in evidence , if any.

12. C.O. No. 220/2019 is allowed in part.

There will be no order as to costs .

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Let the copy of the order be send to the Learned Civil Judge (Junior Division), 4th Court, Howrah.

(AJOY KUMAR MUKHERJEE, J.)