

18.02.2022
Ct. 21
D/L 9
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C.O. 499 of 2021
(Via Video Conference)

Smt. Manju Mondal & Ors.
-Vs-
Sri. Sanat Mondal & Ors.

Sri Nitai Chandra Saha,
Sri Abhijit Ch. Majumder,

... for the petitioner

Sri Nitai Chandra Saha learned Advocate appears for the petitioners. They file affidavit of service along with postal receipts and track reports and which show notice could not be delivered to the opposite parties as the door of the address mentioned in the registered envelopes were found locked except that of Dipen Mondal opposite party no. 2.

None appear on behalf of the opposite parties.

However, revisional application is taken up for hearing. Heard learned Advocate for the petitioners.

In the record original CAN 01 of 2021 which is pending for disposal is not found. Learned advocate for the petitioners file copy of the same and let it be retained till original is traced out. By filing the above CAN the petitioners have prayed for extension of order of stay granted by Hon'ble Co-ordinate Bench of this

Hon'ble High Court on 16.03.2021. Since the revisional application is already taken up for consideration and as such the question of extension of interim order which is no more in existence does not arise. Consequently, CAN 1 of 2021 is disposed of.

The present application under Article 227 of the Constitution of India is at the instance of the plaintiffs/petitioners being aggrieved by order dated 05.02.2021, passed by the learned Civil Judge (Senior Division), 4th Court at Alipore, in Title Suit No. 4946 of 2015 whereby their amendment petition was rejected with the finding that the relevant claim of the plaintiffs/petitioners is barred by limitation.

The facts of the case in gist is that the petitioners/ plaintiffs have filed the above suit for partition of property measuring more than 20 acres of land situated under Police Station Kasba and in Mouza Laskarhat claiming to be the co-sharers by virtue of inheritance along with defendants from their predecessor in interest who have acquired title, right and interest by virtue of a Registered Patta dated 21.10.1938.

The defendant nos. 1 to 11 contested such partition suit by filling a joint W.S. They in para 11 have alleged that Rajani Kanta Mondal the predecessor in interest of the present plaintiffs during his life time gifted his undivided 1/3rd share in the disputed

property in favour of his two full blood brothers namely Panchu Gopal Mondal and Bhola Mondal by executing a registered deed of gift on 31.03.1943. Therefore, they have alleged that present plaintiffs who are claiming to be co-sharers in the disputed property by virtue of inheritance from Rajani Kanta Mondal have no right, title and interest whatsoever over the dispute property.

Now, by filling the amendment petition the plaintiff wanted to amend the plaint and bring on record that the gift deed is a manufactured document and for cancellation of the said Gift Deed and consequently has prayed for amendment in the valuation of the suit also.

The learned Court below while rejecting the said amendment application of the plaintiffs held for cancellation of the said gift deed plaintiffs have to file a separate suit. The proposed amendment if allowed it would take away valuable right which has been accrued in favour of the defendants due to non-action on the part of the plaintiffs in respect of the gift deed.

Perused the plaint there is no specific mention about the existence of a gift deed dated 31.03.1943 however, the plaintiff invariably in their pleading have alleged that Rajani Kanta Mondal during his life time never transferred his share in the disputed property in favour of any 3rd party. That one Sushil Mondal alias Roy a stranger to the family and predecessor in interest of defendant nos. 12 to 18 in collusion with Panchu

Gopal Mondal and Bhola Mondal, the two brothers of Rajani Kanta Mondal might have manufactured a false documents as Rajani Kanta Mondal died leaving behind his minor children in the care and custody of said Sushil Mondal.

It has been contended that petitioners have come to know about the existence of such deed for the first time from the W.S. of defendant no. 12 to 18.

Perused the pleadings of the parties and the amendment petition. Admittedly parties are descendants of one Atul Chandra Mondal, who had obtained a Registered Patta of the disputed property on 21.10.1938. The plaintiffs have prayed for partition of the property covered by the said Patta dated 21.10.1938.

The plaintiffs in their plaint have invariably alleged possibility of existence of some collusive documents affecting their interest in the suit property but without specifying the nature of the document. That by filing amendment petition they have alleged that they came to know about the gift deed from W.S.

Be that as it may, by filing amendment petition the plaintiffs want to change the nature of relief as well as valuation of the suit. Therefore, this Court is of view if the proposed amendment is allowed then it is likely to change the nature and character of the suit. The plaintiff will be permitted to convert a partition suit to a

declaratory suit and a suit for cancellation of a gift deed executed in the year 1943.

Therefore, this Court does not find any merit in this present revisional applicational.

Accordingly, **C.O 499 of 2021 is dismissed.**

CAN no.1 of 2021 is disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Kesang Doma Bhutia, J.)