

22.04.2022
19
ct. no. 7
sb

C.O. 881 of 2022

Smt. Jhuma Das & Ors.

-vs-

Sri Atanu Ghosh & Ors.

Mr. Patha Pratim Roy
Mr. Sarbananda Sanyal
Ms. Poulami Chakraborty
...for the petitioners

Mr. Sunny Nandy
Mr. Subha Pathak
Mr. Tamal Singha Roy
....for the opposite parties

The order dated 7th March, 2022 passed by the learned District Judge, Hooghly at Chinsurah in Misc. Appeal No. 18 of 2022 granting an order of ad interim injunction, upon reversing the order dated 9th February, 2022 passed by the learned Civil Judge (Senior Division), 2nd Court, Hooghly in Title Suit No. 13 of 2022, is subject of challenge in this revisional application.

Admittedly, this is a suit for specific performance, wherein a prayer for injunction was sought for. The ad interim order of injunction was refused by the trial court. An appeal was then carried in Misc. Appeal No. 18 of 2022 challenging the rejection of prayer for ad interim order of injunction. The appellate court granted status quo with respect to the possession, nature and

character of the suit property till 6th April, 2022, which has been extended subsequently.

Learned advocate appearing for the petitioners/defendants submits that an agreement for sale was entered into between the parties, which is insufficiently stamped and unregistered also.

Reliance is placed by the learned advocate appearing for the petitioners on a decision delivered in the case of **Garware Wall Ropes Limited Vs. Coastal Marine Constructions and Engineering Limited** reported in **(2019) 9 SCC 209** to submit that before granting ad interim order of injunction, the document, relying upon which the prayer for ad interim order of injunction was granted, ought to have been impounded for the same being insufficiently stamped with due penalty therefor, and without which there cannot not be any ad interim injunction.

It is thus contended by Mr. Roy, that before being acted upon the insufficiently stamped and unregistered instrument, the court below ought to have taken steps for impounding the said document doing adherence to the ratio decided in the case referred hereinabove.

Per contra, learned advocate appearing for the opposite parties/caveators submits that though

the document was insufficiently stamped and unregistered, but the existence of which cannot be denied by any way whatsoever and the prayer for ad interim order of injunction, directing both the parties to maintain status quo is absolutely necessary for the protection of physical possession of the parties with respect to the suit properties.

In support of the prayer for ad interim order of injunction, learned advocate for the opposite parties has referred one decision reported in **(2010) 5 SCC 401** delivered in the case of **S. Kaladevi vs. V.R. Somasundaram and Others** and being emboldened by such decision, contends that even an unregistered document may be received in evidence under the proviso of Section 49 of the Registration Act, 1908. But such decision has not addressed the provisions of Stamp Act, particularly with reference to a document, which is insufficiently stamped and unregistered as well.

Having considered the submission of both the parties, it appears that the fundamental objection raised by Mr. Roy, is against the ad interim order of injunction being granted, directing both the parties to maintain status quo, for the impugned document (insufficiently stamped and unregistered) not being impounded at the first instance.

When the Misc. Appeal is still pending, the point, now raises, may be best addressed by the first lower appellate court in connection with Misc. Appeal No. 18 of 2022.

The petitioners are given liberty as such to raise such point and other points incidental thereto at the time of final disposal of the Misc. Appeal. The appeal hearing accordingly may be expedited. Pending decision of the Misc. Appeal, the impugned order is modified, directing the petitioners not to create any third party interest in respect of the suit property till the decision of Misc. Appeal is reached.

This order would not, however, prevent the learned lower appellate court to decide the appeal independently upon addressing the point so raised, as referred, hereinabove, and subscribing independent findings therefor.

With this directions and observations, this revisional application stands disposed of.

Urgent photostat certified copy of this order duly applied for, be given to the parties upon compliance of all requisite formalities.

(Subhasis Dasgupta, J.)