IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1950 of 2019

Smt. Pranati Mandal
Vs.
Unique Creation

For the Petitioner	:	Mr. Saunak Bhattacharya Mr. Swapan Chakraborty Mr. Sounak Mondal
For the Opposite party	:	Mr. Pradip Kumar Tarafdar Mr. Sambuddha Dutta
Heard on	:	10.11.2022
Judgment on	:	01.12.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the impugned Order dated March 13, 2019 passed by the Learned Civil Judge (Junior Division), 7th Court at Alipore, south 24 parganas in Title Suit No. 24 of 2017, present revisionsl application has been preferred. Petitioner contended that petitioner filed Title Suit No. 24 of 2017 against defendant/opposite party praying for decree of cancellation of reregistered agreement dated 17th December, 2012 entered between the parties and also for a decree of cancellation of registered general power of attorney executed by plaintiff in favour of partners of the defendant and also for injunction. Learned trial court passed an order of ex-parte *ad interim* injunction restraining opposite parties from creating any third party interest over the said property.

2. Upon receipt of summon the opposite party on 03.03.2017 entered appearance and prayed time to file written statement. On 28th April 2017 opposite party filed an application under order VII Rule 11 of the code of civil procedure praying for rejection of the plaint on the ground that the suit has not been properly valued. The petitioner filed written objection denying material allegations. Said application filed by the opposite party for rejection of the plaint was kept pending for long time and for which petitioner preferred one revisional application before this court being C.O. No. 635 of 2019, praying *inter alia* for expeditious disposal of the said application and by an order dated February 22 2019, a co-ordinate Bench of this court was pleased to dispose of the said application with direction to dispose of said application under order VII, rule-11 within a period of one month. Learned Trial court by its order dated 13th March 2019, was pleased to dispose of the said application on contest in terms of the observation made in the body of the said order and directed the petitioner to correct the valuation of the suit by the next date, in default the plaint shall be rejected.

3. Petitioner alleged that Learned Trial Court passed the aforesaid order considering the allegations of the opposite party as gospel truth without adjudicating as to whether the petitioner's suit is merely a suit for declaration within the ambit of section 34 of Specific Relief Act or it is a suit coming within the purview of section 31 of the said Act. Mr. Bhattacharya learned counsel appearing on behalf of the petitioner submits that trial judge erred in fact as also in law and failed to appreciate that there shall be no question raised in the plaint as regards recovery of possession of any immovable property and/or transfer of interest thereto and the suit for cancellation of registered development agreement as well as the power of attorney would come *inter alia* within the purview of section 7 (iv) (b) of the West Bengal Court fees Act 1970. He further submits that learned trial Judge in passing the order impugned stressed much on the purported nomenclature of the instruments executed by the petitioner in favour of the opposite party and failed to appreciate that even by execution of those instruments no interest had been transferred until and unless the opposite party complies the terms and conditions levied upon them and from the plaint case it would appear that the opposite party did not discharge a single obligation on their part. Mr. Bhattacharya further contended that learned trial court in passing the order impugned unnecessarily got swayed away without looking into the consideration part entered in the said development agreement which restricted to apportionment of shares of the suit property without any monetary consideration and that too after the opposite party fulfils all the terms and conditions levied upon them. In fact learned trial court erroneously arrived at a conclusion that the instant suit filed by the petitioner being a suit within the purview of section 31 of the Specific Relief Act and as such petitioner has to value her suit according to consequential of the instrument and thereby failed to appreciate that by such instrument the petitioner did not in any way transfer her interest over the suit property to the opposite party and which shall be retained by her subject to fulfillment of terms and conditions by the opposite party, which according to the petitioner, opposite party had failed to do so in the instant case. The Trial Court applied erroneous tests of law and even after taking judicial note to the fact that there is no consideration of valuing the suit property in the development agreement and/or payment of consideration thereto to the petitioner by the opposite party, erred in appreciating the valuation of the suit from the said agreement being the value mentioned thereby by the registering authority and erred in holding that the valuation being visible for the said development agreement itself, the instant suit appeared to have been grossly undervalued in as much as value of the said agreement in relation to the suit property was ascertained by the registering authority as Rs. 11,40,000/-.

4. Mr. Tarafdar Learned Counsel appearing on behalf of the opposite party submits that from the plaintiff's prayer as appearing in the plaint, it is clear that plaintiff has sought for decree of cancellation of the registered agreement dated 17.12.2012 and also for cancellation of general power of attornment executed by the plaintiff in favour of the partners of the defendant which was registered on 17.12.2012 and it clearly shows that this is purely a suit for cancellation of registered agreement as well as cancellation of registered power of attorney and not a simplicitor suit for declaration that the suit agreement or the power of attorney is void and not binding upon him. Since this is a suit for cancellation of the contract, so section 31 of the Specific Relief Act clearly attracts in the present case and the learned court below was justified in passing the impugned order, which does not call for any interference by this court.

5. Having considered the facts and circumstances of the case and argument put forward by the parties before me, it appears that the main dispute between the parties relates to the point as to whether the suit has been filed under section 34 or 31 of the said Act. It appears from the order impugned that learned court below at the initial stage of the proceeding came to the conclusion that the suit filed by the plaintiffs is to be guided by section 31 of the Specific Relief Act, though he observed "undoubtedly, by the execution of the development agreement title to the property had not been transferred in favour of the defendant. However, some amount of interest has definitely accrued in favour of the defendant after execution of the development agreement". Accordingly court below held that it would not be improper to say that by execution of those two documents some amount of interest in relation to the suit property has been transferred in favour of the defendant and he also held that the plaintiff's apprehension about creation of third party interest in respect of the suit property is not unreasonable in as much as the defendant is empowered to deal with the suit property on the strength of the general power of attorney executed by the plaintiff and as such plaintiffs' apprehension of his right title and interest to the suit property being in danger, is not unreasonable and accordingly the court below held that the nature of allegation of the plaintiff being so as made out in the plaint, the entire suit comes within the purview of section 31 of the Act. He further observed that if the person filing such suit is a party to the impugned instrument he has to come under the provisions of section 31 of the Specific Relief Act to have such instrument declared as void and if the person filing such suit is not a party to such instrument, he may come within the purview of section 34 of the Specific Relief Act to have such instrument declared as void. Accordingly learned court below concluded that as the suit comes under the purview of section 31 of the Specific Relief Act, so the suit has to be valued in terms of the consideration mentioned in the agreement and not as per plaintiffs choice and the court accordingly finds some objective standard of ascertaining the valuation being visible from the development agreement itself, where the registering authority has mentioned market price of the property with a view to ascertaining proper stamp duty, and as such he came to the conclusion that the suit has been grossly undervalued and directed the plaintiff to correct the valuation of the suit.

6. In this context it is to be mentioned that the three requisites to attracts section 31 of the Specific Relief Act are

(i) The instrument is voidable against the plaintiffs.

(ii) Plaintiff may reasonably apprehend serious injury by the instrument being left outstanding.

(iii) In this circumstances of the case, the court considers it proper to grant this relief of preventive justice.

7. Whether the plaintiff's suit is a suit for declaration or it's simplicitor a suit for cancellation of the deeds, it is the substance and not the form of the suit that determines whether the suit is for a declaration under section 34 or one for cancellation under section 31 of the Specific Relief Act. Then again about the question of reasonable apprehension, it is well settled that reasonable apprehension is to be determined with reference to the circumstances of each case, with which court has to deal.

8. It is submitted that in the said suit pleading has not been completed, issues not framed and evidence has not yet been started. In the aforesaid back ground I am of the view that without the evidence both documentary as well as oral and without making scrutiny of evidence both documentary and oral the court below has hurriedly came to the conclusion that the suit comes within the purview of section 31 of the Specific Relief Act and as such passed the impugned order directing the plaintiff to correct the valuation when the issue for determination as to whether suit comes under the 31 or 34 of the Specific Relief Act depends upon the substance of the suit and the criteria about "reasonable apprehension" is also to be determined with reference to circumstance of the case and which can only be decided after adducing evidence by the parties.

9. In view of above C.O. 1950 of 2019 is allowed. The order impugned dated 13.03.2019 is hereby set aside.

10. However the issue regarding under valuation of the suit and payment of deficit court fee shall be kept open in the suit and learned trial court would be at liberty to frame an issue to that extent, if required , at the appropriate stage of the proceeding namely whether the suit has been correctly valued or not and whether the court fee paid is sufficient or not. However since I have not gone into the merit about the issue in controversy herein, it would be kept open to both the parties to agitate all the points relating to this issue before the court below and learned court without being influenced by any observation made herein by this court shall determine the issue on the basis of materials on record.

However 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.

(AJOY KUMAR MUKHERJEE, J.)