21.02.2022
(S/L-27)
Ct.-18
(Susanta)

(**Via Video Conference**)

C.O. 2672 of 2019
With
I.A. No. CAN 1 of 2019 (Old CAN 9219 of 2019)

Sri Partha Pratim Mahato & ors.
-Vs-
Sri Debdip De & anr.

Mr. Srinjoy Das,
Ms. Adrija Chatterjee,
Mr. Kiran Ray,
Ms. Sanjukta Mukherjee,
.... For the Petitioners.
Mr. Amitava Mukherjee,
Ms. Arpita Saha,
Ms. Ankita Ghosh,
... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for specific performance of an agreement for sale and is directed against order no. 59 dated July 19, 2019 passed by the Additional Court of learned Civil Judge (Senior Division), Purulia in the said suit being Title Suit No. 183 of 2016.

The agreement for sale was insufficiently stamped, as such, when sought to be tendered in evidence, the learned Trial Judge impounded the same and sent it to the concerned Collector for assessment of stamp duty payable on it.

The Collector returned his assessment to the Trial Court. The petitioners prayed imposition of ten times penalty on the said assessment of the Collector.

The learned Trial Judge vide order no. 53 dated July 16, 2018 allowed the said prayer of the petitioners thereby modified the said assessment of the Collector.

The opposite parties challenged the said order in C.O. No. 3910 of 2018.

A Co-ordinate Bench of this Court by the judgment and order dated April 24, 2019 allowed the said revisional application with the following direction:

> "***C.O. No. 3910 of 2018 is allowed on contest, thereby setting aside the impugned order and directing the petitioners to deposit /pay the actual stamp duty of Rs.50,47,000/- along with registration fees of Rs.7,93,089/-, as directed by the trial court vide Order No. 41 dated August 29, 2017, within three weeks from date in the court below.*** "

The opposite parties having failed to make the aforesaid deposits within the time fixed by the aforesaid order prayed for extension of time.

The learned Trial Judge by the order impugned has not only permitted the opposite parties to deposit the said amount but also directed registration of the said agreement for sale.

The petitioners are aggrieved by the direction for registration of the said document.

The learned Trial Judge while passing the said direction for registration of the said document has recorded “as directed by the Hon’ble High Court”.

On perusal, it appears that there was no such direction for registration of the said document in the order passed by the Co-Ordinate Bench in the said revisional application.

Besides, direction for registration of the said document on payment of the assessed stamp duty and registration fees is *de hors* the provision of Section 35 of the Indian Stamp Act 1899, therefore, not sustainable.

The portion of the order directing registration of the said agreement for sale is set aside. The order impugned is modified to the aforesaid extent only without interfering with the other portions of it.

C.O.2672 of 2019 is disposed of with the above terms without any order as to costs.

The connected application, being I.A. No. CAN 1 of 2019 (Old CAN 9219 of 2019) is also disposed of accordingly.

It is made clear that the opposite parties are not entitled to withdraw the money already deposited in terms of the order impugned with the registering authority without the leave of the Court.

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

(Biswajit Basu, J.)