

21.09.2022
Item No.21
Ct. No.7
CHC
(disposed of)

C.O.2431 of 2022

Shrimati Soma Saha
Vs.
Shrimati Supriya Saha & ors.

Mr. Sourav Sen,
Ms. Adrisnata Chakraborty
...for the petitioner

The matter has come up in the list upon mentioning by learned advocate for the petitioner with a prayer for upgradation.

Mr. Sen, learned advocate appearing for the petitioner upon furnishing a copy of notice submits that the prayer for upgradation has been informed to the Caveators/opposite parties issuing prior notice for the purpose.

Nobody appears for the Caveators/opposite parties, either physically or in virtual mode, observing the formalities.

The copy of the notice issued upon Caveator, Abhishek Shaw, learned advocate dated 19th September, 2022, be taken on record. It bears receiving endorsement of Caveator.

The instant revisional application is against order of affirmance of injunction order. Learned first lower appellate court in Misc. Appeal No.52 of 2021, affirmed

the order passed under Order 39 Rule 1 and 2 C.P.C., finally disposed of, by learned Civil Judge (Junior Division), First Court, at Barrackpore, North 24 Parganas in Title Suit No.232 of 2021.

Mr. Sen is candid enough to submit at the threshold of this case that the property gifted to opposite party nos.2 and 3 be allowed to be enjoyed by them, without creating any third party interest till the decision of the suit, which is basically to challenge such deed of gift taking the ground of misrepresentation, coercion, fraud and undue influence.

After the disposal of the temporary injunction, the core issue raised in the suit may be addressed upon collection of the evidence, to be adduced by both the parties to this case.

Concurrent findings having thus reached in respect of application for injunction, this Court finds no reasons to interfere with the appellate decision, when there is no manifest error or gross injustice occurred therefor, to the petitioner seeking injunction.

This is a case, wherein a deed has been sought to be cancelled by the petitioner/plaintiff disputing with the execution of such deed. In the event of creation of third party interest, pending decision of the suit, there may be unforeseen complication to follow.

The revisional application is thus disposed of directing the court below to expedite the hearing of the suit.

While endeavouring such exercise, the logical conclusion of the suit may be reached at an early date without granting any unnecessary adjournment, unless it is extremely unavoidable.

Pending decision of suit, the property admittedly in possession of the defendants may not be subjected to the creation of third party interest till the decision of the suit.

Petitioner is directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)