

12.9.2022
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Ct. no. 652
sb

C.O. 2057 of 2021

**Sree Sree Anandamoyee Dakshina Kalimata
Thakurani & Ors.**

Vs.

Sri Satyendranath Chakraborty & Ors.

Mr. Arif Ali

...for the petitioners

Being aggrieved and dissatisfied with the order dated 18.11.2021 passed by the learned 10th Civil Judge (Senior Division), at Alipore in Title suit no. 8188 of 2012, the present revisional application has been preferred.

The petitioners contended that the petitioners filed the present suit being 8188 of 2012 praying for framing of scheme of management for administering, managing and controlling the suit properties which are debatta properties belonging to the plaintiff no. 1/deity. One Panchanan Chakraborty, the father of petitioner nos. 2 and 3 and opposite party no. 1 in or around 1995, out of his religious and pious intention purchased property in question out of his own money and constructed a temple commonly known as Sri Sri Kalimata Thakurani and in the year 2002, the said Panchanan Chakraborty acting as the Shebait of the deity also purchased Nepalganj hat out of his own money by way of a registered Deed dated

11th November, 2002. After the death of Panchanan Chakraborty, the opposite party no. 1 started creating various encumbrances to the suit properties. The aforesaid title suit no. 8188 of 2012 was filed by the petitioner no. 2 as the Shebait of the deity, and the petitioner no. 1 herein against the petitioner no. 3 and opposite parties. In the said suit the petitioner no. 1 and 2 filed an application under Order 41 rule 1 praying for appointment of receiver with respect to the suit properties but by an order dated 25th August, 2017, the said application was rejected. The petitioner no. 1 and 2 thereafter preferred the appeal being Misc. appeal no 198 of 2018 before the learned District Judge, Alipore which was subsequently transferred to 11th Additional District Judge, Alipore and learned court after contested hearing by an order dated 4th September, 2019 allowed the appeal and appointed the petitioner no. 2 and 3 herein along with opposite party no. 1 as joint receivers for realisation management protection preservation and improvement of the debettar properties. After receiving the order dated 4th September, 2019 the petitioners held a meeting with the opposite party no 1 for the purpose of implementing the order dated 4th September, 2019 and accordingly leaflets was circulated amongst stall owners at the Nepalganj hat for realisation of rent from them.

The opposite party no. 1 had been throughout hostile and has been acting against the interest of the

debettar estate and the plaintiff no. 1/deity. The opposite party no. 1 in collusion with the opposite party no. 3 to 6 had attempted to illegally stop the petitioners herein from acting in terms of order dated 4th September, 2019 of the court below through various means.

The plaintiff on 12th February, 2020 filed an application under Section 151 of the Code of Civil Procedure praying for discharge of the opposite party no 1 as joint receiver since he is acting contrary to the interest of the defendant no. 1/deity. The opposite party no. 1 did not file any objection against the said application. The opposite party no. 1 is a compulsive alcoholic and lacks integrity. He is in the habit of signing papers, agreement being tempted with alcohol by unscrupulous people.

However the learned court below rejected the application under Section 151 of the Code by order dated 18th November, 2021, holding that the petitioners had not been able to produce any document and by refusing to take note of the unregistered lease deeds executed by opposite party no. 1 in favour of the third parties. Accordingly, the petitioners herein prayed for setting aside the order dated 18th November, 2021 and for removal of the defendant no. 1 as receiver from the said property.

In spite of service, the opposite party no. 1 is not represented.

On perusal of the impugned order, it appears that the allegations levelled against the defendant no. 1/opposite party no. 1 is that defendant no. 1 has been hostile throughout and upon acting against the interest of the deity/ petitioner no. 1 in collusion with the petitioner no. 3 to 6 had attempted to illegally stop the plaintiff no. 2 and defendant no. 2 from acting in terms of order passed by learned District Judge, on 4.9.2019 and defendant no. 1 practically trying to control the suit property by forming illegal committee with his men and agent violating the order of the court. In support of the same, they have filed certain notarised lease deeds which have been executed by defendant no. 1.

It is submitted that against the said petition for removal of the defendant no. 1/opposite party no. 1 as receiver, opposite party no. 1 has not contested by filing any written objection not defendant no. 1/opposite party no. 1 has denied the said allegations. However, the learned court below was of the view that the lease deeds are not registered and as such the court refused to take judicial notice and furthermore, the court below observed that mere filing of injunction petition does not tantamount to violation of the courts order.

Having considered the facts and circumstances of the case, admitted position as appears is that plaintiff no. 2 and defendant no. 1 and 2 were appointed as joint receiver for the realisation , management, protection,

preservation and improvement of the Debattar property by maintaining quarterly accounts as ordered by the court below on 9.9.2019 and said order has not been challenged by either side, and as such it attains its finality. However petitioner's contention has not been challenged by opposite party No.1 that in terms of said order, realization of rent management or improvement of deity has not been done nor any account maintained or submitted, since passing of said order. The petitioners herein submit that due to resistance raised by the opposite party no.1, the compliance of the order dated 4.9.2019 could not be carried out and practically defendant no. 1 enjoying the total usufructs for his personal gain and the rents and profits derived from Debattar property are not being used for the purpose for which the property was purchased and the temple was constructed. In spite of service of copy of application, opposite party No. 1 has not denied the aforesaid contention and order dated 04.09.2019 has practically become non-functional.

Considering the aforesaid facts of the case, the order dated 18th November, 2021 passed by the Civil Judge (Senior Division) 10th Court, Alipore is hereby set aside. The defendant no. 1/opposite party no. 1 is hereby removed as receiver in connection with the property in question. The plaintiff no. 2 and defendant no. 2 will act as receiver in terms of the order dated

4.9.2019. The receivers will open a bank account in a nationalized bank in the name of the Sri Sri Kalimata Thakurani within a period of four weeks hence and receivers after realizing the rent and profit from the debattar property will deposit the same time to time in the aforesaid bank account. The aforesaid two receivers will also submit the quarterly account before the court below and for that purpose they will not claim any remuneration as ordered earlier.

Accordingly, C.O. 2057 of 2021 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)