

IN THE HIGH COURT AT CALCUTTA**CIVIL REVISIONAL JURISDICTION****APPELLATE SIDE****Present:-****THE HON'BLE JUSTICE Kesang Doma Bhutia.****C.O. No. 2134 of 2021****Pratima Roy****-Versus-****Sri Sankar Krishna Roy & Ors.**

For the Petitioners : Mr. M. Goswami,
Mr. P. Goswami,

Hearing concluded on : 21.01.2022

Judgment on : 31.01.2022

Kesang Doma Bhutia, J:- Smt. Pratima Roy plaintiff/petitioner being aggrieved by the order passed by the learned Civil Judge (Junior Division), 1st Court, Alipore in Title Suit No. 3293 of 2010 on 15.11.2021 has filed the present application under Article 227 of the Constitution of India and whereby learned Civil Judge (Junior Division), 1st Court, Alipore was pleased to allow the petition under Order 1 Rule 10 of Civil Procedure Code (C.P.C.) filed by the present

opposite party no. 2 and 3 for getting themselves added as a party being a lis pendente lite transferee of the suit property.

Facts necessary for disposal of the present revisional application in gist is that center of dispute amongst the parties is a shop room named Lakhmi Narayan Bhandar measuring about 160 sq.ft situated at 22, Dr. K.S. Roy Road (Jadavpur Station Road), P.S.- Jadavpur, Kolkata-700032 and situated on the public road which belongs to P.W.D.

The plaintiff/petitioner claims the disputed shop room was owned by her deceased mother Smt. Khama Bala Roy and who during her life time gifted the same in her favour by executing a gift deed dated 06.05.2003. Her mother had inducted the defendant no.1 one of her sons as a licensee to run the disputed shop at a monthly license fees of Rs.1000/- and who continued to remain in possession of the shop room as a licensee under the plaintiff too, but at a monthly license fees of Rs.1500/-. The plaintiff who has no source of income to maintain her livelihood intend to run the impugned business and as such she revoked the license by sending a notice to her brother through her lawyer on 8th day of April, of 2009. Such notice was duly received by him.

In spite of having received notice of revocation the opposite party no.1 refused to vacate the suit shop room. Rather, opposite party no.

1 illegally got his name mutated in the Assessment Register of Kolkata Municipal Corporation in respect of the disputed shop room after deleting the name of their mother. That she filed objection before the Deputy Assessor Collector Kolkata Corporation but in vain. Then finding no alternative she has to file Title Suit No. 3293 of 2010 for recovery of possession of the shop room and for other consequential reliefs.

On the other hand the defendant in his Written Statement (W.S.) has alleged that their father being a squatter had occupied the land in-question and constructed a temporary shed to run Dashakarma Bhandar. Such business was run by their father Sachindra Chandra Roy along with him one of his sons. When Sachindra Chandra Roy became old he handed over the business to opposite party no. 1 by virtue of an affidavit dated 7th February, 1995. Since then opposite party no. 1 has been running the business from the disputed shop room on his own right and alleged disputed shop room was never owned by their mother.

Now, it has come on record that during the pendency of such suit opposite party/defendant no. 1 has transferred the disputed shop room in favour of the added defendant nos. 2 & 3/opposite party nos.2 & 3, without seeking permission of the court. Such transfer, if the same is found to be legal and valid stands hit by section 52 of the

Transfer of Property Act, 1882. After purchase of the suit shop room, the opposite party nos. 2 and 3 have filed an application under Order 1 Rule 10 of C.P.C before the learned Court below to get themselves added as defendants in Title Suit No. 3293 of 2010 and by passing the impugned order the learned Court below has added them as defendant nos. 2 & 3.

The facts which have been averted in the pleadings of the parties and discussed above, this court is of view before deciding the issue whether the opposite party nos. 2 and 3 are necessary parties in the suit or not, the issue which need to be decided first is whether the mother of the plaintiff or the defendant no. 1 indeed had valid transferable right over the disputed shop room.

It is true the revisional Court is not a fact finding Court, but as observed by the Hon'ble Supreme Court in *Maria Margarida Sequeria Fernandes & Ors. Vs. Erasmo Jack de Sequeria (Dead) through L.Rs.* reported in *AIR 2012 SC 1727* has been pleased to hold that "truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to be seriously engage themselves in the journey of discovering the truth that is their mandate, obligation and bounded duty. Justice System will acquire credibility only when people will be convinced that justice is based on the foundation of the truth".

Hon'ble Suprem Court has been pleased to refer *MohanLal Shamgi Soni Vs. Union of India* reported in 1991 SUPP (1) SCC 271 and where Hon'ble Supreme Court has been pleased to observe *that a presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has own and who has lost, or is there not any legal duty of his own, independent to the parties, to take an active role in the proceedings to finding the truth and administering justice to the people. The Court must discharge its statutory functions whether discretionary or obligatory according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure justice is being done.*

Admittedly the disputed shop room is located on the Public Road i.e. on PWD land known as Jadavpur Station Road. It is not the case of the parties that Government settled the land on which the shop shed is constructed by issuing patta in their names or in the names of their parents. The pleadings of the parties are silent on the facts how their predecessor in interest acquired transferable interest over the disputed shop room.

Then a question may arise how a person/ squatter of PWD road who has not acquired any legal right, title and interest over the disputed shop room can create interest over the same in favour of her daughter/the plaintiff/ petitioner by executing a gift deed in 2003 or

by their father in favour of the defendant no. 1 by executing an affidavit.

An affidavit is not a document of title. It neither creates title nor extinguishes any title on immovable property. Similarly recording in assessment register of Municipality will not create any title over the property against which tax being collected.

A squatter of a PWD road cannot have right, title or lease and cannot claim adverse possession against the Government and that too in respect of a part of a busy road like Jadavpur Station Road, a place meant for Public Utility Service.

Therefore, this court is of view the plaintiff and defendant no.1 in collusion with each other appear to have filed the suit to legalise their illegal occupation/ status of trespassers and gain adverse possession of a part of the Public Road, a Government Land by claiming execution of a gift deed by an alleged squatter or now by transfer by the defendant no.1 in favour of the defendants no.2 & 3 and who in reality had/has no transferable interest in suit property. If the reliefs claimed by the plaintiff and by the defendant no.1 are allowed, then the squatters of footpath throughout the City of Kolkata and its suburban area would come to the court to legalize their illegal occupation over the different part of footpath and roads from where they run their business.

Since, the mother of the plaintiff had no transferable right over the suit shop structure and as such the alleged gift deed of the plaintiff is null and void and similarly the defendant no.1 who has not acquired any interest over the disputed property has/had no right to transfer the suit property in favour of the defendants no.2 & 3. The transfer, if any, affected by the defendant no. 1 in respect of the disputed shop room in favour of the defendant no. 2 & 3 appears to be illegal. Therefore, whether such transfer is hit by Section 52 of the Transfer of Property Act or not becomes immaterial.

Accordingly, impugned order is set aside. The learned court below is directed to hear the case on the point of maintainability and if court finds the case is maintainable, then proceed further with the hearing of the case as per law.

Accordingly, **C.O. 2134 of 2021** is disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)