

42 06.4.2022
Sc Ct. no.8

FMA 784 OF 2021

Smt. Rajlakshmi Syam & Anr.

Vs.

Smt. Sharbani Nandi & Ors.

Mr. Supriyo Bose
Mr. Debojyoti Deb
Mr. Sanjoy Kumar Das.

.... For the Appellants

Mr. Haradhan Banerjee
Mr. Jayanta Kr. Banerjee
Mr. Subhodip Biswas
Ms. Priyanka Anand Sharma.

....For the Respondent
No. 1.

Mr. Om Narayan Rai

.... For the Respondent
No. 2/ SBI

Ms. Sreemoyee Mitra

.... For the Respondent
No. 3/OBC

The appeal is arising out of an order passed by the learned Civil Judge (Senior Division), 7th Court, Alipore in connection with an application filed under Order 39 Rule 4 read with Section 151 of the Code of Civil Procedure in Title Suit No. 300 of 2020.

The learned trial Judge disposed of the application under Order 39 Rules 1 and 2 read with Sections 94 and 151 of the Code of Civil Procedure filed by the plaintiff on 28th July, 2020 and the application under Order 39 Rule 4 read with Section 151 of the Code of Civil Procedure filed by the defendant nos. 1 and 2 dated 8th October, 2020 by the common judgment and order dated 4th

December, 2020. The said applications were filed in relation to a suit for partition.

Mr. Supriyo Bose, learned senior advocate representing the appellants has submitted the suit is not maintainable and various issues raised in the application under Order 39 Rule 4 of the Code of Civil Procedure were not adverted to and conceded with in its proper perspective.

Mr. Haradhan Banerjee, learned senior advocate representing the respondent no.1 submits that in a suit for partition the co-sharers should not be allowed to deal with, alienate and/or encumber the suit property and in the event the order is varied, the plaintiff shall suffer irreparable loss and be prejudiced and the object of filing the partition suit would be defeated.

We have carefully examined the order under appeal. We feel there is some substance in the argument made by Mr. Bose, at least, insofar as the two flats situated at 9, Lower Rawdon Street, Kolkata – 700020 are concerned.

By reason of the amendments to the Prohibition of Benami Transaction Act, 1988, the plea of the plaintiff that the respondent no.2 is a benamdar in respect of the suit property, does not survive.

Accordingly, the order of injunction in respect of the Flat No. 3A, 9 Lower Rawdon Street, Kolkata – 700 020 is concerned, shall stand vacated.

According to the plaintiff her mother viz., defendant no. 2, the present appellant no. 2 in this proceeding is only a benamdar in respect of the said flat and as we have already observed that the amendment of the Prohibition of Benami Transaction Act, 1988 does not permits such issue to be raised under Section 4 of the said Act. The plaintiff was unable to show that the property was purchased allegedly prior to 2016 in the name of her mother out of the fund of the father and the mother had no independent income. Moreover, the suit was instituted after 2016 which clearly bars any such issue to be raised in a suit. In view thereof, the bar under Section 4 of the Act squarely applies to the suit even if it is assumed that the purchase was made in the name of the mother prior to 2016. We are thus inclined to vacate the interim order insofar as the said flat is concerned.

The impugned order is modified to the aforesaid extent.

We direct the trial Court to expedite the hearing of the suit. In the event the defendants have not filed their written statements, they shall do so within four weeks from date.

We request the trial court to pass peremptory direction with regard to the procedural matters in order to make the said suit ready for hearing.

We also request the learned trial court to dispose of the suit as expeditiously as possible and preferably within

a period of one year from the date of framing of the issues, subject to the convenience of the trial court.

The appeal stands disposed of. There shall be no order as to costs.

The Registrar (L & O.M.) shall communicate this order to the learned trial Court for doing the needful.

Photostat certified copy of this order, if applied for, be furnished on usual undertaking.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)