

20.4.2023
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Ct. no. 652
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CO 199 of 2020

Sri Deb Nath Paul
Vs.
Sri Debendra Nath Paul & Ors.

Mr. Tapas Bhattacharjee
Mr. Sanjib Kumar Mukhopadhyay
...for the petitioner

Mr. Sounak Bhattacharya
Mr. Subham Gupta
Mr. Tanmoy Kumar Dey ...for the opposite parties

This is an application under Article 227 of the Constitution of India against the order dated 27.8.2019 passed by the learned Additional District Judge, 1st Court, Barasat in Misc. Appeal no. 156 of 2017.

Learned counsel for the petitioner contended that the plaintiff/opposite party nos. 1 to 3 herein filed a suit for declaration and for permanent injunction against the predecessor-in-interest of the appellant/petitioner as also the predecessor-in-interest of the opposite party nos. 4 to 6 and also against the proforma opposite party nos. 8 and 9 in the court below being Title suit no. 741 of 2017. In the said suit, the plaintiff/opposite party nos. 1 to 3 herein filed injunction application. The said trial court at Barasat, by an order dated 28.8.2017, allowed ad interim order of injunction by directing Anath Nath Paul, the original defendant no. 1 not to create any third party

interest in respect of the suit property till 31st October, 2017. In the said suit, plaintiff/opposite party nos. 1 to 3 filed another application for injunction under Section 151 of the Code of Civil Procedure but said application was dismissed. The plaintiff/opposite party nos. 1 to 3 did not challenge the said order of rejection dated 14.9.2017. In the said suit, Anath Nath Paul, original defendant no. 1 died on 23.9.2017 and the information of his death was duly communicated. The plaintiff/opposite party nos. 1 to 3 filed an application for substitution of the legal heirs and successors of Anath Nath Paul but according to the plaintiff, there is no scope to substitute the legal heirs and successors in the said suit since the devolution of interest of the office of the trustee is to be done in terms and conditions as mentioned in the deed of trust dated 27th June, 1958.

Being aggrieved and dissatisfied with the said order dated 31.10.2017 by which the court below refused to extend the interim order of injunction in view of the death of Anath Nath Paul, the plaintiff preferred Misc. appeal being no. 156 of 2017. From the memorandum of said Misc. appeal, it reveals that in the cause title of the memorandum of appeal, plaintiff/opposite party nos. 1 to 3 had impleaded legal heirs and successors of Anath Nath Paul as respondent nos. 1 to 5. In the said Misc. appeal, plaintiff/opposite party nos. 1 to 3 also filed an application under Order 39 Rule 1 and 2 of the Code of

Civil Procedure and learned first appellate court was pleased to grant an injunction order ex parte against the respondent/petitioner herein. Subsequently, the learned Civil Judge, Senior Division, 1st Court, Barasat, by his order dated 14.3.2018 allowed the substitution application which was filed by the plaintiff/opposite party nos. 1 to 3 herein and the petitioner entered appearance in the said Misc. appeal and filed an application under Order 39 Rule 4 of the Code for vacating the order of injunction. Plaintiff/opposite party nos. 1 to 3 herein filed written objection against the application under Order 39 Rule 4 of the Code but the court below after hearing both the parties, was pleased to dismiss the petitioner's application under Order 39 Rule 4 of the Code.

Learned counsel for the petitioner submits that the appeal itself is not maintainable against the legal heirs and successors of Anath Nath Paul, original defendant no. 1, since deceased, because the property in question has to be devolved in terms of the direction mentioned by the settler in the deed of trust dated 27th June, 1958 and not upon the legal heirs and successors of the trustee. The court below erred in dismissing the application under Order 39 Rule 4 of the Code as he has failed to consider the cardinal provisions of law to the extent that an office of trustee devolves upon his successor in office and not upon his legal heirs and successors. The plaintiffs/opposite parties herein who claimed themselves

as priests cannot have any right over the properties of the trust save and except the right to perform Seva Puja and they cannot be allowed to have an order of injunction as passed by the learned first appellate court and as such the order impugned is bad in law and is liable to be set aside.

In this context, he has relied upon a judgment of this court in **Dipak Kumar Das Vs. Md. Irshad Qamar and others** reported in **(2019) 1 ICC 709**.

Learned counsel for the opposite parties opposed such contention made by the learned counsel for the petitioner and he submits that the substitution has already been made by the trial court and as such there is no infirmity on the part of the appellants to proceed with the appeal. He further submits that the court below was justified in passing the interim order and was further justified in rejecting the respondent's prayer under Order 39 rule 4 of the Code. He further submits that the order impugned does not call for any interference.

Having considered the facts and circumstances of the case and without going into the merits of the controversy between the parties, it appears to me that in the interest of justice the injunction application filed by the appellant in the said Misc. appeal and the Misc. appeal itself are required to be disposed of at the earliest since it is pending since 2017.

In view of above, C.O. 199 of 2020 is disposed of with a direction upon the learned Additional District Judge, 1st Court, Barasat to dispose of the injunction application as well as the Misc. appeal being no. 156 of 2017 within a period of six months from the date of communication of this order, without being influenced by any portion of this order.

It is also made clear that all the issues including the issue relating to right of the appellants about continuation of the appeal shall be kept open before the appellate court for disposal.

Accordingly, C.O. 199 of 2020 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)