

S/L 36
30.01.2023
Court. No. 12
Sourav

CO 463 of 2019

Sri Debasis Dey
Vs.
Smt. Manasi Nandy & Ors.

Mr. Sanjib Seth

...for the petitioner.

Mr. Supratim Laha
Mr. Balaji Chakraborty

...for the opposite party no. 2

Both parties are represented by their respective learned advocates.

Heard both sides at length.

In this revisional application under Article 226 of the Constitution of India, the Order No. 52 dated 19.12.2018 as passed in Title Suit No. 558 of 2015 by the learned Civil Judge, Junior Division, 2nd Court, Howrah has been assailed.

By the impugned order, the learned trial court allowed an application as filed under Order 26 Rule 10A of the Code of Civil Procedure by the plaintiff in a suit for declaration and injunction and thereby directed the Chief Medical Officer, Howrah Hospital to recommend the name of a medical expert of Neurological department who is competent to investigate the state of mind of proforma defendant who according to the plaintiff is suffering from advanced dementia.

The defendant no. 1 felt aggrieved and thus preferred the instant revisional application.

In support of the instant revisional application, learned advocate for the defendant no. 1/petitioner at the very outset draws attention of the Court to the plaint, written

statement and the petition as filed by the plaintiff under Order 26 Rule 10A of the Code of Civil Procedure hereinafter referred to as the 'said application' before the learned trial court.

It is contended on behalf of the defendant no. 1/petitioner that since before the learned trial court a suit for declaration and permanent injunction has been filed at the instance of the plaintiffs/opposite parties, learned trial court is not at all justified in allowing the prayer of the plaintiffs as filed under cover of the said application. It is further argued that even if, a medical practitioner in the field of neurology examines the proforma defendant that is the mother of the parties to the instant proceeding, the said medical practitioner would not be in a position to assess the condition of the mental health of the said proforma defendant which was prevailing three years back that is at the time of execution of the deed of conveyance which has been challenged before the learned trial court.

Learned advocate for the defendant no. 1/petitioner thus submits that it is a fit case for allowing the instant revisional application by setting aside the impugned order.

While opposing the contention of the learned advocate for the defendant no. 1/petitioner, learned advocate for the plaintiffs/opposite parties submits that since before the learned trial court the execution of the alleged deed of conveyance has been challenged on the ground of mental illness of the proforma defendant, learned trial court is very much justified in allowing the said application. It is further submitted that since it is the plaintiff case that at the time of

the alleged execution of the deed of conveyance, the proforma defendant that is the mother of the parties to the instant proceeding was mentally imbalanced, old, ailing, feeble, sick, hard of hearing and speech and suffering from lack of eye sight and thus, had got no physical or mental capacity to understand what she was doing, learned trial court is justified in allowing the said application of the present plaintiffs/opposite parties for effective adjudication of the said suit. Learned advocate for the plaintiffs/opposite parties thus submits that it is a fit case for dismissal of the instant revisional application.

This Court has perused the copy of the plaint, copy of the written statement as filed by the present petitioner before the learned trial court including the said application as well as the impugned order as passed by the learned trial court.

In considered view of this Court for effective disposal of the instant revisional application, the prayer portion of the plaint is required to be looked into and the same is reproduced hereunder:

***“The Plaintiffs therefore pray
for:-***

***(A) For a Decree for Declaration
that the Registered Deed of Gift dated
13.03.2015 and Registered Deed of Sale
dated 18.02.2015, morefully described in
the item No. 1 and item No. 2 in the
Schedule “B” herein below, allegedly
executed by the Proforma Defendant No.
3 in favour of the Principal Defendant***

No. 1 and Principal Defendant No. 2 respectively are totally void, illegal, ineffective, inoperative and invalid documents and not binding upon these Plaintiffs and the same are neither acted upon nor intended to be so.

(B) For a Decree for Permanent Injunction against the Principal Defendant Nos. 1 and 2 by restraining him from acting upon those Registered Deed of Gift dated 13.03.2015 and Registered Deed of Sale dated 18.02.2015, morefully described in the Item No. 1 and Item no. 2 in the Schedule “B” herein below, and from further creating any third party interest and/or transferring and/or alienating the said Schedule “A” mentioned properties and/or from changing the nature and character or the said properties in any manner whatsoever;

(C) For temporary injunction in terms of prayer (B);

(D) For costs;

(E) For any other relief/reliefs to which the Plaintiffs are entitled to get in law and equity;”

This Court also considers that a look to the provisions of Order 26 Rule 10A of the Code of Civil Procedure is also required and the same is also reproduced hereunder:-

“10A. Commission for scientific investigation.- (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.”

On conjoint perusal of the entire pleadings as made in the plaint, vis-à-vis, the provisions of Order 26 Rule 10A of the Code of Civil Procedure, it does not appear to this Court that in a suit for declaration and for permanent injunction there is at all necessity for any scientific investigation as contemplated under the provisions of Order 26 Rule 10A of the Code of Civil Procedure. It is settled principle of law that in a suit, the carriage of proceeding lies upon the plaintiff

and in order to get success, plaintiff is duty bound to adduce evidence to prove his own case.

Such being the position, this Court thus considers that the learned trial court while disposing the said application and while passing the impugned order has not properly interpreted the provisions of Order 26 Rule 10A of the Code of Civil Procedure in its proper perspective.

In view of such, the instant revisional application is hereby allowed. The impugned Order No. 52 dated 19.12.2018 as passed in Title Suit No. 558 of 2015 by the learned Civil Judge, Junior Division, 2nd Court, Howrah is hereby set aside.

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

(Partha Sarathi Sen, J.)