

September 18, 2023
Sl. No.13
Court No.19
s.biswas

CO 632 of 2023

Mir Kaoshair Ali and others
vs.
Mir Manowar Hossain

Mr. Partha Pratim Roy

... for the petitioners

This revisional application arises out of an order dated September 15, 2022 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat, North 24 Parganas, in title Suit No.612 of 2016.

By the order impugned, the learned court below allowed the application filed by the plaintiff/opposite party for holding commission to obtain signature and LTI of the plaintiff for scientific investigation of LTI and collection of report of a hand writing expert. The court directed that the signature and LTI of the plaintiff be collected in presence of both the plaintiff and the defendants. Thereafter, the documents/deed of sale bearing no.4361 of 1970 along with specific signature and LTI of the plaintiff be sent to the Questioned Document Examination Department, CID, West Bengal, for examination and report.

Mr. Roy, learned advocate for the defendant no.1, challenges the said order on the following grounds:

a) The suit was not maintainable.

- b) As the maintainability of the suit was in dispute, the consequential order in aid of the reliefs claimed in the plaint could not be granted by directing scientific investigation of the signature and the LTI of the plaintiff.
- c) The civil court could not allow determination of the authenticity of the signature when a criminal case on the same issue, is pending.

This court finds that the plaintiff's specific contention was that the 'A' schedule property was an exclusive property of the plaintiff which he had got by a registered deed of sale bearing no.4667 of 1961 from one Mir Rajab Ali. In the R.S. record of rights, the name of the plaintiff was entered. The plaintiff constructed his residential house on the 'B' schedule property and three other houses on the 'C' schedule property which were all parts of the 'A' schedule property. Rents were also paid to the State of West Bengal.

The defendant no.1 is the full brother of the plaintiff and the defendant nos.2 to 4 are the nephews of the plaintiff. The plaintiff had entrusted the deed with defendant no.1. The deed was in the defendant's custody. Thereafter, the plaintiff found that in respect of L.R. record, the name of the defendant no.1 had been entered. On query, the plaintiff came to know that on the basis of a sale

deed no.4361 of 1970, the name of the defendant no.1 had been entered in the L.R. records. The plaintiff searched in the registration office and the plaintiff came to know that the aforementioned deed had been obtained illegally. The deed of sale no.4361 of 1970 had been created by fraud, misrepresentation and false impersonification. The plaintiff denied his signature on the said deed.

In the written statement, the defendant's case was that the plaintiff had himself put his signature on the subsequent deed. Paragraphs 13 and 16 of the written statement clearly indicate that the defence case was that the signature on the said deed belonged to the plaintiff.

Thus, the entire dispute revolves around the authenticity of the signature of the plaintiff in the deed no.4361 of 1970.

Under such circumstance, this court does not find that the learned court below had acted illegally and with material irregularity in allowing the scientific examination of LTI and report of the handwriting expert with regard to the signature of the plaintiff in the deed no.4361 of 1970. The order impugned is well-reasoned. The court held that once the maker of the deed had disputed his signature, the proper course of action was to allow scientific

investigation of LTI and call for a report from the hand-writing expert.

The revisional application is thus dismissed.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)