

13.02.2023
Item No.13
Court No.6.
S. De

**C.P.A.N. 204 of 2021
in
F.A. 88 of 2015
With
I.A. No. CAN/1/2015
(Old No. 1153 of 2015)**

**Sukumar Ghosh.
Vs
Srikumar Ghosh & Anr.**

Mr. Rajarshi Basu,
Mr. S.T. Mina,
...for the petitioner.
Mr. Amit Kr. Pan,
Mr. Sobhyan Majumder,
...for the alleged contemnors.

This contempt application has been filed for alleged willful violation of an interim order dated March 10, 2015, passed by a Co-ordinate Bench in FAT 606 of 2014.

The petitioner, namely, Sukumar Ghosh, filed an application before the Additional District Judge, Bolpur, seeking probate of what he claimed to be the last will and testament of his mother late Avarani Ghosh, who was also the mother of the respondent no.1 herein, namely, Srikumar Ghosh. The probate application was contested by Srikumar and other legal heirs of Avarani. The application was marked as a suit and was dismissed on contest. FAT 606 of 2014 is filed challenging such dismissal order.

At the time of admission of the appeal, an interim order dated March 10, 2015, was passed to the following effect :-

“Status-quo as regards nature and character of the suit property and possession of the parties as on today will be maintained till the disposal of this application.

Parties are also restrained from transferring the suit property till the disposal of this application.”

The petitioner alleges that the respondents herein have transferred properties covered by the said order, in breach of the order. In particular, the petitioner alleges that plot no.467 has been sold and transferred by Koushik and Srikumar.

We have heard learned counsel for the parties. Learned advocate for the respondents, in his usual fairness, says that it is a fact that there has been violation of the aforesaid order passed by this Court. Plot no. 467 has been transferred, as the respondents were under the misconception that the same was not covered by the restraint order. There was no willful violation of the Court's order.

Learned advocate for the respondents also points out that the petitioner has also transferred a

plot of land covered by the restraint order being plot no. 1282/1516. This is also admitted by learned advocate for the petitioner. However, learned advocate says that this was not willfully done by the petitioner. The petitioner is taking steps for annulling the transfer.

We find that the petitioner i.e. Sukumar Ghosh and the first respondent i.e. Srikumar Ghosh are brothers. Koushik is the nephew of both Sukumar and Srikumar. It is a family dispute.

We are of the considered opinion that there has not been any willful violation of this Court's order. Accordingly, we are not inclined to hold the respondents guilty of contempt of Court.

However, both the petitioner and the respondents must ensure that the sale transactions entered into by and between them and the purchasers of land covered by the restraint order are annulled either by way of appropriate Court proceedings or otherwise. It is settled law that a sale of land made in breach of an injunction order of a competent Court is non-est in the eye of law and does not transfer title to the purchaser.

With the aforesaid observations, the application being CPAN 204 of 2021 is disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as

expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)