

Ct.
No.
652

162
akb

18.07
2023

C.O. 855 of 2019
Amitava Datta
-Versus-
State of West Bengal & Ors.

Mr. Suvasish Sengupta
Mr. Abhimanyu Banerjee
Ms. Roshni Kalam **...For the Petitioner**

Mr. Debasis Kar **...For the Opposite Party No. 2**

This application under Article 227 of the Constitution of India has been preferred by the petitioner against the order dated 14th November, 2018 passed by the learned Civil Judge (Junior Division), 1st Court at Alipore in Title Suit No. 286 of 2012.

By the impugned order learned Court below rejected the application under Order VII, Rule 11 of the Code of Civil Procedure filed by the petitioner herein.

Petitioner states that the petitioner is the owner of the suit property by virtue of Deed of Sale executed by the opposite party No. 3 herein, who happens to be the brother of the plaintiff / opposite party No. 2, on 13th December, 2022, and since then he has been residing at the property with his family. While he was residing at the suit property, he came to know about a letter of administration dated 29th August, 2002 obtained by the opposite party Nos. 2 and 3 regarding the suit property by virtue of a Will allegedly executed on 17th April, 2000, by one Gouri Das since deceased, who was the erstwhile owner of the suit property.

Petitioner submits that said Gouri Das, by virtue of a deed of Gift executed on 12th May, 2000 had transferred the said property in favour of the opposite party No. 3 herein. Thereafter, the petitioner filed one case which was

registered as Revocation Case no. 143 of 2006 (subsequently renumbered as Revocation Case no. 1 of 2007) challenging the grant of letter of administration to the opposite party nos. 2 and 3, wherein the opposite party no. 2 appeared and contested the same.

Said opposite party No.2 as plaintiff suddenly filed aforesaid suit seeking cancellation of said deed of gift after sleeping over his rights for about 6 years.

After receiving the summon in connection with the aforesaid Title Suit no. 286 of 2012, the petitioner appeared and filed one application under Order VII rule 11 of the Code of Civil Procedure, 1908 on the ground that the suit is barred by law of limitation. Learned court below took up the said application for hearing on 19th March, 2018 and by the impugned order, rejected the said application filed by petitioner herein.

Mr. Suvasish Sengupta, learned counsel appearing on behalf of the petitioners submits that the plaintiff in his plaint categorically admitted that he gathered knowledge about the existence of the Deed of gift at least since 2006 and in this context, he referred paragraph 29 of the plaint which clearly suggests that the plaintiff had knowledge about the existence of the deed of gift on and from 22.10.2006. Learned court below overlooked and ignored the said fact from the order impugned which is liable to be set aside.

Mr. Debasis Kar, learned counsel for the opposite party no. 2 submits that in paragraph 29 of the plaint, the plaintiff though stated that the cause of action lastly arose on 22nd October, 2006 but in the next paragraph i.e. in paragraph 30, he has stated that the instant suit is not time

barred in view of the maximum “Fraud knows no limitation”. He further submits that the issue of limitation comprises of point of law as well as point of fact and as such unless evidence is taken, it is too early to reject the plaint invoking the power under Order VII rule 11 of the Code. In this context he has relied upon the decisions in the case of *Ramesh B. Desai and Ors. Vs. Bipin Vadilal Mehta and Ors.*, reported in 2006 (5) SCC 638; *Sri Biswanath Banik & Anr. Vs. Smt. Sulanga Bose & Ors.*, reported in 2022 (7) SCC 731; *M/s. Mongia Realty and Buildwell Pvt. Ltd. Vs. Manik Sethi*, reported in 2022 (11) SCC 572 and *Salim D. Agboatwala & Ors. Vs. Shamalji Oddhavji Thakkar & Ors.*, reported in 2022 (1) ICC 255 13, *Shakti Bhog Food industries Ltd. Vs. Central bank of India & Another* reported in 2021 (1) ICC 398, *Shukathussain Mohammed patel Vs. Khatunben Mohammedbhai Polora* reported in 2019 (10) SCC 26, *Vaish Aggarwal Panchayat Vs. Inder Kumar and others* reported in 2020 (12) SCC 809, *Kamala & others Vs. K.T. Eshwara Sa & others* reported in 2008 (12) SCC 661.

I have heard learned Counsel appearing on behalf of both the parties. It appears from the plaint that the plaintiff in paragraph 10 of the plaint categorically admitted that in first part of 2006 defendant No. 2 came to the suit property and told the plaintiff that he had purchased the entire premises No. 78A/1C, Swinhoe Lane including the suit property by a Deed of Sale dated 13th December, 2002 duly executed by the defendant No. 1, in his favour and the plaintiff has no right, title and interest over the portion under his occupation being the suit property.

It further appears that that the plaintiff in paragraph 29 has categorically stated “that the cause of action for the instant suit arose on 12th May, 2000 when the fictitious deed of Gift manufactured by the defendant No. 1 and on 12th

December, 2002 when the said Deed of Sale duly executed and registered on the strength of fictitious deed of Gift dated 12th May, 2000 and on 22nd october, 2006 when the said fictitious deed of gift and the deed of sale come to knowledge of the plaintiff.”

In such view of the matter it is apparent that even if allegation made in the plaint are taken to be correct in their entirety then also in the first part of 2006 plaintiff’s right to sue accrues when admittedly defendant No.2 came to the suit property and disclosed that he has purchased the suit property by a deed of sale dated 13.12.2002 duly executed by the defendant No.1 in his favour and the plaintiff has no right title and interest over the portion under his occupation being the suit property (Paragraph 10 of the plaint). Article 58 and 59 of the schedule to the Limitation Act, 1963 prescribes the period of limitation for filing a suit where a declaration is sought or cancellation of an instrument, which is three years, when the right to sue first accrues or when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside.

In such view of the matter, the revisional application, being C.O. 855 of 2019 is allowed.

The plaint filed by the plaintiff in Title Suit No. 286 of 2012 is hereby rejected. Under order VII, Rule 11(d) of Civil Procedure Code

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)