

09.10.2023.
Court No. 652
Item No. 191
pk

C. O. 1266 of 2018
Bimal Chakraborty
Versus
Mithu Nandi (Dutta) and others

Mr. Sounak Bhattacharyya,
Mr. Sounak Mondal,
Mr. Abhirup Halder

...For the petitioner.

Mr. Dilip Kumar Maity,
Mr. Prasanta Kumar Das

... For the opposite parties.

Being aggrieved and dissatisfied with the order being no. 88 dated 06.03.2018 passed by the learned Civil Judge(Junior Division), Islampur, Uttar Dinajpur in Misc. Case No. 14 of 2008 (renumbered as Misc. Case No. 21 of 2015), the present application under Article 227 of the constitution of India has been preferred. The petitioner's contention is that the petitioner filed an application under Section 8 of the West Bengal Land Reforms Act, 1955, inter alia, praying for preemption on the ground of vicinage. The opposite parties herein entered appearance in the said Misc. Case and contesting the same.

Learned advocate for the petitioner submits that in paragraphs 10 and 11 of the written objection, the opposite parties herein referred to several deeds in respect of which the petitioner obtained certified copies of the said deeds except Deed No. 5826 dated 24.02.1968. Accordingly, the petitioner filed an application praying for making certified copies of the

sale deeds as exhibits. The opposite parties herein contested the said application and the learned Court below was pleased to reject the petitioner's application for marking the certified copies of the deeds as exhibits.

Mr. Saunak Bhattacharya, learned advocate appearing on behalf of the petitioner submits that the Court below had acted illegally and without jurisdiction in rejecting the said application for marking the certified copies of the deeds as exhibits. The Court below ought to have appreciated that the certified copy of the sale deed is admissible in evidence as secondary evidence. The opposite parties herein referred about the deeds-in-question in their pleadings and have placed reliance on the same in their pleadings and also the original deeds are in the custody and possession of the opposite parties herein and for which there was no justifiable cause for the Trial judge to reject the said application.

He further submits that the learned Court below was completely erred in holding that notice under Section 66 of the Evidence Act is required to be served upon the opposite parties in the instant case, otherwise said deeds are not admissible in evidence. Accordingly, the petitioner has prayed for setting aside the order impugned.

Mr. Dilip Kumar Maity, learned advocate appearing on behalf of the opposite parties raised

objection and contended that since the original deeds are not filed by the petitioner, the Court below was justified in passing the order impugned and the order impugned does not call for interference. In this context, he also referred a judgement in the case of Sri Palaiah Vs. Smt. Palamma passed in WP No. 933 of 2017, by Karnataka High Court on 24.1.2017.

I have considered the submissions made by both the parties. It is not in dispute in the present context that the opposite parties before the Court below in their written objection has referred about the deeds at paragraph 10 and 11.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioners submits that all the original deeds are lying in the custody of the opposite parties.

Mr. Maity, learned advocate appearing on behalf of the opposite parties submits that he does not have instruction whether those original sale deeds are lying in their custody or not.

I have considered submissions made by both the parties. Learned court below was erred in observing that certified copy of registered deed of conveyance is inadmissible in evidence unless notice under Section 66 of the Evidence Act is served upon the parties who are in possession of it, when the opposite parties are not sure as to whether deeds are in their possession or not as submitted by counsel.

In fact the certified copy obtained from the Registration Office can be admitted in evidence under Section 57(5) of the Registration Act, 1908 and shall be admissible for the purpose of proving the contents of the original documents. In this context, reference can be made in the case laws reported in AIR 2001 SC 2532, AIR 1954 Mad 486, AIR 1989 Orissa 27, AIR 2011 Jhar 76, AIR 1979 Gauhati 14.

Apex Court in the case of Bipin Shantilal Panchal Vs. State of Gujrat and another reported in (2001) 3 SCC 1 has clearly laid down the guideline to be followed in such cases and paragraphs 13 and 14 of said judgment runs as follows:-

13. *It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.*

14. *When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in*

adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

In such view of the matter, C. O. 1266 of 2018 is hereby disposed of with a direction upon the Court below to mark the certified copies of the deeds as mentioned in the schedule of the application to mark exhibit with objection keeping open the genuineness and evidentiary value of the aforesaid deeds for final adjudication of the preemption case.

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.)