

16.03.2023
SL No.60
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
CIVIL REVISIONAL JURISDICTION**

APPELLATE SIDE

C.O. 1189 of 2022

Smt. Sampa Roy & Anr.

versus

Smt. Mili Roy & Ors.

Mr Abhisek Banerjee

Mr. Surajit Mitra

..... for the petitioners.

Mr. Soujanya Bandyopadhyay

.....for the opposite party No.1 to 4.

This revisional application has been filed by the petitioners under Article 227 of the Constitution of India challenging order dated 23rd February, 2022 passed by learned Civil Judge (Junior Division), 6th Court, Howrah in Title Suit no. 840 of 2018 rejecting the prayer of the petitioners for discovery, production and inspection of documents under Order XI Rule 12, 14 and 15 of the Civil Procedure Code.

The brief fact of the case is that petitioners filed a suit being Title suit No. 840 of 2018 for declaration and permanent injunction against the opposite parties contending, *inter alia*, that one Probhat Kumar Roy, since deceased, purchased the suit property in *benami* of defendant No. 1 Mili Roy by dint of a deed of sale no. 119 for the year 1995. The opposite party No. 2, Himanshu Roy also filed a suit against petitioner No. 1 praying for a decree for

eviction of licensee being Title suit No. 875 of 2018. Both the aforesaid suits are being tried analogously by the learned trial court. The petitioners filed an application under Order XI Rule 12, 14 and 15 of the Civil Procedure Code for discovery, production and inspection of original deeds being No. 119 of 1995 and No. 1774 of 2015 relied by opposite party no.2 in his suit for eviction of licensee. Upon hearing the learned trial court rejected such application filed by the petitioners.

Being aggrieved by and dissatisfied with the impugned order the petitioner has preferred the present revisional application.

Mr Abhisek Banerjee, learned advocate for the petitioners submits that at the time filing of the suit the plaintiff had obtained the certified copy of the impugned deed however for better appreciation, the original deeds are required to be inspected by the petitioners which led to filing of the application under Order XI Rule 12, 14 and 15 of the Code. He further submits referring to the provisions of Order VIII and Rule 1A of the Code that since the defendants have also relied on such documents it was incumbent duty of the defendants to produce such documents. Further referring to the provisions of Order XIII Rule 1 of the Code he submits that before the settlement of issues the parties are required to produce all documentary evidence in

original before the court and, therefore, the prayer made by the petitioners for discovery, production and inspection of documents is innocuous one which should have been allowed by the trial court in the interest of justice. To buttress his submissions Mr. Banerjee relies on a decision of this Hon'ble Court passed in ***Gyanti Devi & Ors versus Shanti Devi*** reported in **2012 (3) CLT 404**. In light of his aforesaid submissions, he prays that defendants be directed to produce the original deeds which are relevant in the suit and liberty be given to the petitioner to inspect such documents.

In reply to the aforesaid contentions raised on behalf of the petitioners, Mr. Soujanaya Bandyopadhyay, learned advocate for the opposite party Nos. 1 to 4 submits that as per the averments made in the plaint the petitioner is very much aware of the contentions of the deeds and the execution of such deed has never been challenged by the plaintiff rather entitlement has been challenged and, therefore, inspection of original deeds is uncalled for. The provision embodied under Order XI Rule 12 of the Code is discretionary power given to the court and it has to decide whether to allow or reject such application for inspection basing on requirement in the suit. In the aforesaid backdrop, he submits that the trial court was justified in rejecting the

application under Order XI Rule 12, 14 and 15 filed by the petitioner.

Before delving into the merit of the application it would be apposite to reproduce the relevant provisions embodied under Order XI Rule 12, 14 and 15 of the Civil Procedure Code which is reproduced hereunder.

“12. Application for discovery of documents- Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit :

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.”

“14. Production of documents. - It shall be lawful for the court, at any time during the pendency of any suit, to Order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the court shall think right; and the court may deal with such documents, when produced, in such manner as shall appear just.”

“15. Inspection of Documents referred to in Pleadings or Affidavits:- Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any

document or who has entered any document in any list annexed to his pleadings or produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse with the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs as otherwise as the Court shall think fit.

Order XI Rule 12 of the Code entitles any party to the proceeding to apply to the court for an order directing the other party to make discovery on oath of the documents which are or have been in his possession or power relating to the matter in question. Rule 14 empowers the Court to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit. Rule 15 provides for inspection of documents referred to in the pleading or affidavits of parties or has entered any document in any list annexed to his pleadings. Apart from aforesaid provision relating to discovery, production and inspection, Order XIII Rule 1 of the Code also makes its obligatory and imperative on the parties to produce all documentary evidence in original where the copies have been filed along with the plaint or written statement on or before the

settlement of issues. It is sufficient if the documents would be relevant for the purpose of throwing light on the matter in controversy. Thus, where it is seen that the documents have an iota of relevancy so far as the rights of the parties are concerned in the suit, the provisions of the Code manifest that the documents in original is to be produced before the court. Bearing in mind the above provisions, I revert back to fact of the case. Upon perusal of plaint of suit for eviction of licensee being Title Suit no.875 of 2018 opposite party no.2 (plaintiff therein) has contended that one Kanai Mazumdar by dint of deed of sale being no. 119 of 1995 transferred 2 *kathas* of land in favour of his mother Mili Roy, who subsequently gifted the said land in his favour by deed of gift being no. 050111774 of 2015. The petitioners being plaintiffs in Title suit no.840 of 2018 has contended that the property was purchased by one Prabhat Kumar Roy from Kanai Mazumdar by dint of deed of sale being no. 119 for the year 1995 in *benami* of his wife Mili Roy. Thus, admittedly in both the suits, which are tried analogously by learned trial Court, the deed of sale being No. 119 of 1995 and deed of gift being no. 050111774 of 2015 of which discovery, production and inspection are sought for are relevant.

Though in *Gyanti Devi (Supra)* the provisions for

discovery, production of documents has been discussed but the question for consideration before the court was whether the Civil court should decide the objection as to proof and admissibility of the document at the time when such document is tendered in evidence or should postpone, the same to be considered at the time of the argument after tentatively marking the document as exhibit subject to objection. Thus, the ratio of the said case does not apply to the case at hand.

In the aforesaid backdrop, the order of the learned trial court rejecting the application of the petitioners for discovery, production and inspection of the aforesaid documents is set aside.

It is not in dispute that the contesting opposite parties-defendants are in possession of the original deed of sale being No. 119 of 1995 and deed of gift being no. 050111774 of 2015. Accordingly, the contesting opposite parties-defendants is directed to produce the aforesaid documents within four weeks from date before the learned trial court in accordance with law for inspection by the petitioners.

Upon production of such documents as above, learned trial Court shall fix date and time for inspection of those documents by the petitioners or

their learned advocate-on-record. The inspection of the aforesaid documents is to be undertaken in presence of parties as well as their learned advocate-on-record.

With the aforesaid observations, the revisional application being **C.O 1189 of 2022** is allowed and stands disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stand disposed of.

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

(Bivas Pattanayak, J.)