

Ct. 04.10
No. 652
2023
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C.O. 1503 of 2019
Avik Ray
-Versus-
Kinkar Roy & Ors.

Mr. Sudip Banerjee
Mr. Sanjoy Kumar Das

...For the Petitioner

Mr. Angshuman Chakraborty

...For the Opposite Party
Nos. 2 & 3

Order No. 36 dated 26th March, 2019, passed by the learned Civil Judge (Senior Division) 1st Court, Hooghly in Title Suit No. 147 of 2013 has been assailed herein under Article 227 of the Constitution of India.

Plaintiff petitioner herein filed a suit for declaration and recovery of possession against the present opposite parties. Undisputedly, one Hemlata Ghosh @ Hena Ghosh was the original owner of the suit property. According to the plaint case said Hemlata Ghosh executed a Will on 8th September, 1986 and on her death an application for grant of probate was filed in the Court of the learned District Delegate at Alipore.

The defendant No. 1 herein contested the said Probate proceeding and as such it became contentious and it was renumbered as Original Suit No. 14 of 2008. However, the Probate Court granted Probate of the said Will on 30th July, 2012.

After long lapse of time defendant No. 1 of the suit disclosed that he became owner of the suit property by virtue of Deed of Gift executed by said Hemlata Ghosh. The plaintiff/petitioner herein challenged the signature of said

Hemlata Ghosh appearing in the Deed of Gift and for the purpose of comparison of signature of Hemlata Ghosh appearing in the original Will executed in favour of the plaintiff with the signature appearing in the Deed of Gift, plaintiff/petitioner filed three applications before the Court below one for seeking direction upon defendants to produce original deed of gift allegedly executed in favour of defendant No.1 and another for calling the original Will from the Court custody executed by said Hemlata Ghosh and the other for comparing her signature with that of the signature appearing in the Deed of Gift allegedly executed in favour of the defendant No. 1 under Order XI, Rule 14, and under Order XXVI, Rule 10(A) and Section 151 of the Code of Civil Procedure.

Learned Court below rejected the said three applications after hearing both the parties with the observation that the signature/hand writing of Hemlata Ghosh appearing in the Deed of Gift cannot be compared with the signature appearing in the Will as the original Deed of Gift is not lying in the custody of the defendant No. 2. It is lying in the custody of the defendant No. 1, who is no more contesting in the suit and the certified copy of the same will not serve the purpose as comparison cannot be made from the certified copy of deed and as such even if any order is passed by the Court that will not be fruitful.

Mr. Sudip Banerjee, learned Counsel appearing on behalf of the petitioner submits that the Court below failed to appreciate that the Court can direct for production of documents at any time during pendency of the proceedings. Learned Court below also failed to appreciate that the

defendant No. 1 deliberately did not contest the present application and as such the Court below ought to have give a direction upon the defendant No. 1 for production of original Deed of Gift so that signature appearing in the Deed of Gift can be compared with the signature of Hemlata Ghosh @ Hena Ghosh in the Will executed in favour of the plaintiff. Accordingly he has prayed for setting aside the order impugned.

Mr. Angshuman Chakraborty, learned Counsel appearing on behalf of the opposite party raised objection contending that he is representing only defendant No. 2, and defendant No. 1 is not contesting either in the Court below, or before this court. The original Deed of Gift is lying in the custody of the defendant No. 1, as such he is not in a position to compel defendant No. 1 to produce the said Deed of Gift and as such the applications filed by the plaintiff has got no merit at all. He is a bona fide purchaser for value and he is in possession of the property in question since purchase from defendant No.1. As such he prayed for dismissal of the revisional application and submits that the order impugned does not call for any interference. He further submits that on earlier occasion plaintiff filed another application under Order XXVI, Rule 10(A) of the Code on similar ground but that was rejected by the Court below vide order No. 14 dated 9th January, 2017.

I have considered the submissions made on behalf of both the parties. It appears that the learned Counsel appearing on behalf of the opposite party/defendant No.2 had made it clear that the original Deed of Gift is not lying in his custody. It is further submitted that the original Will is

also lying in the Court custody, who granted Probate. It is trite law that while considering an application under order XI, Rule 14, the court is required to satisfy himself and to record a finding to the effect that the documents are in possession or power of the contesting defendant i.e. opposite party No.2 herein. It is not the case of plaintiff that original deed of gift is lying in the custody of contesting defendant No.2 and as such the Court below was justified in observing that even if any order for production of the original Deed of Gift is passed against the defendant No. 2 that will yield no fruitful result. In such view of the matter the order impugned is neither perverse not illegal and as such does not call for any interference by this Court, exercising supervisory jurisdiction.

In such view of the matter, C.O. 1503 of 2019 stands dismissed.

However, this order will not preclude the petitioner herein to call for the Deed Volume of the impugned Deed of Gift to prove or dispute its genuineness from the concerned Registry Office at the appropriate stage of proceeding.

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

(Ajoy Kumar Mukherjee, J.)