

Ct. No. 652
211
akb

**18.10
2023**

C.O. 2067 of 2018
Prafulla Kumar Ghosh
-Versus-
Sulekha Karati
With
C.O. 3004 of 2018

Mr. Milan Chandra Bhattacharjee
Mr. Sushanta Kumar Laha ...For the Petitioner / Opposite party

Re.: IA. No. CAN 5 of 2023

Affidavit-of-service filed by the petitioner is taken on record.

Opposite party is not represented.

This is an application wherein the petitioner has prayed for recalling of the order dated 20th September, 2023.

The background of the present application is that one Prafulla Kumar Ghosh, since deceased transferred the suit property in favour of Biswajit Ghosh on 21st April, 2003 and divested himself from the suit property from that property. But said Prafulla suppressing the same and by practicing fraud upon the Court filed present suit for eviction being T.S. 62 of 2004 when said Prafulla had no right title interest in the suit property. Present application under Article 227 was preferred against an order of refusal to grant police help in an execution proceeding by the decree-holder / Prafulla Kumar Ghosh arising out of decree passed in said T.S. 62 of 2004.

During pendency of application under Article 227, said Prafulla died. An application was filed by aforesaid transferee Biswajit Ghosh for impleading him as a party to proceed with the application, without submitting aforesaid background. This Court vide order dated 31.10.2022 allowed

said prayer made by Biswajit for impleading him as a party.

Subsequently the Revisional application was disposed of by this Court. Thereafter the Executing Court, set aside the decree passed in aforesaid T.S. No. 64 of 2004 on the ground of practicing fraud upon the Court vide its order No. 90 dated 12.9.2023. Petitioner / judgment-debtor now submits that taking advantage of impleading him as a proper party in this application vide order dated 31.10.2022 passed by this Court, said Biswajit is now trying to assert his right to evict the tenant / judgment-debtor Sulekha Karati unlawfully without taking due course of law.

Having considered the facts and circumstances of the case and the submissions made by petitioner/judgment-debtor and that there was a suppression of material fact, when the order dated 31.10.2022 was passed, the order dated 31.10.2022 and its connected orders i.e. order dated 16.12.2022 and 9.1.2023, 20.6.2023 and 20.9.2023 are hereby recalled. The name of the petitioner in orders dated 15.6.2023, 4.7.2023, 16.8.2023 in the cause title of the order shall be deleted and in its place the name of the petitioner shall be written as “Re.: Prafulla Kumar Ghosh, since deceased”.

The application, being IA No. CAN 5 of 2023 is accordingly disposed of.

(Ajoy Kumar Mukherjee, J.)