

27.3.2023
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Ct. no. 652
sb

**CO 2438 of 2018
With
CAN 2 of 2022**

**Dhananjoy Pramanik & ors.
Vs.
Gopal Chandra Mal & Ors.**

Mr. Sandip Das ...for the Petitioners

Mr. Sounak Bhattacharya
Mr. Saunak Mondal
Mr. Abhirup Halder
Mr. Anirban Saha Roy ...for the opposite parties

Being aggrieved and dissatisfied with the order no. 247 dated 2.1.2018 passed by the learned Civil Judge, (Junior Division), First Additional Court in Title Suit no. 122 of 2010, the present application under Article 227 of the Constitution of India has been preferred.

The opposite party nos. 1 and 2 as plaintiff instituted aforesaid suit for declaration, injunction and recovery of khas possession in respect of the property mentioned in the schedule to the plaint. The petitioner duly appeared in the said suit by filing written statement denying thereby each and every allegation made in the plaint. The evidence of DW 1 has been started and the defendant produced one Patta deed and Amalnama dated 24th Chaitra 1356 B.S.

Learned court below by an order dated 2.1.2018 was pleased to mark said patta deed as Exhibit B but did

not mark the Amalnama being 1356/28 as exhibit. Being aggrieved by the said order, the petitioner has preferred this revisional application, contending that the learned court below overlooked Section 49 of the Registration Act and he should have marked the Amalnama as an exhibit. In this context, learned counsel for the petitioner has relied upon the judgments of Bipin Shantilal Pachal Vs. State of Gujarat and another (2001) 3 SCC 1 and 71 CWN page 651 (Bijoli Prova Nandy Chowdhury vs. H.C. Dutta and others.)

Learned counsel for the opposite party relied upon the judgments reported in Bhuban Mohan Banerjee vs. Edan Sardar and others(1914) SCC online Cal 469, Sheikh Elahi Vs. Sheikh Hukum (1913) SCC Online Cal 197, Syed Sufdar Reza Vs. Amzad Ali and Anr. and Gyanti Devi Si Ors. vs. Shanti Devi (2019) 3 CalLt 404 and contended that Amalnama by which the interest in the property has been permanently transferred in favour of the grantee and possession has been delivered for an indefinite period, such document requires registration and as the document concerned, is an unregistered document, the trial court has committed no mistake in refusing to mark the Amalnama where Chakran interest has been settled in favour of grantee. He further contended that such unregistered Amalnama is not admissible in evidence because the document in essence is an agreement of lease and is compulsorily registrable

under Section 17 of the Registration Act. In this context, he also referred Section 107 of the Transfer of Property Act and contended that the permanent tenure has been created by the Amalnama, so it requires registration. He further contended that in view of the judgment passed in Gyanti Devi SI Ors. (supra), it is settled that the law laid down by the three judges bench in Bipin Shantilal Panchal's case is not applicable and if said proposition is to be accepted then the provision laid down in Order 18 of the Code will become infructuous. Accordingly, he had supported the order impugned and submitted that the order impugned does not call for any interference.

I have considered the submissions made by both the parties. it appears that there is a serious dispute between the parties as to whether the Amalnama by which, the grant was made in favour of the grantee, is a lease deed or not. On perusal of the recital of the Amalnama, it appears that the grantee of the said Amalnama was stated to be worshippers who are continuing worshipping of the deity for a considerable period of time and the deed was executed in favour of the grantee in order to continue the seba puja of the deities from the usufructs and for which the Chakran interest was granted.

In Bipin Shantilal Panchal's case, the three judges bench of the Supreme Court was pleased to lay down for better course which says that 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, the objected part of the oral evidence subject to such objections to be decided at the last stage in the final judgment. It was further observed, 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 and the court further observed that there is no illegality in adopting such a course. However, if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. In the present case, no case has been made out about the deficiency of stamp duty in the concerned document.

Learned counsel for the opposite parties also referred another judgment of this court in B.P. Nandy Chowdhury Vs. H. C. Dutta (71 CWN 681) where it was held where the deed is in such a form that it can neither be called a lease or an agreement for a lease, but it gives a right to possession, it may come within the description of an "Amalnama". Accordingly, the judgments referred by the petitioner passed by this court is not applicable herein in view of specific guideline framed by Apex court in Bipin Shantilal Panchal case.

In view of the facts and circumstances of the case and also relying upon the workable practice as has been laid down by the Three-Judges Bench of the Apex Court in Bipin Shantilal Panchal's case (supra), C.O. 2438 of 2018 is disposed of with a direction upon the court below to make a note of the objection raised by the plaintiff/opposite party herein and to mark the said Amalnama as exhibit tentatively in the case as an objected document and to record the objected part of the oral evidence, subject to such objections to be decided at the last stage in the final judgments and if the court finds at the final stage that the objection so raised is sustainable, the court will be at liberty to keep such evidence excluded from consideration.

The court below is requested to conclude the trial and dispose of the entire proceeding of the suit preferably within a period of three months from the date of communication of the order.

Pending application, if any, stands disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)