

S/L 8
06.092023
Court. No. 29
Sourav

CO 2833 of 2011

**Sri Bhaskar Pratim Moitra & Anr.
Vs.
Smt. Sulekha Nandy & Ors.**

*Mr. Pradip Kumar Roy
Mr. Joydeep Roy
Mr. Tirthajit Roy Chowdhury*

...for the opposite parties.

1. None appears on behalf of the petitioners.
2. The opposite parties are represented by their learned advocate Mr. Pradip Kumar Roy who has been appointed through Calcutta High Court Legal Services Committee.
3. Considering the long pendency in the instant matter, this Court proposes to dispose of the instant application as filed under Article 227 of the Constitution of India on merit even in absence of the petitioners.
4. By filing the instant application for revision under Article 227 of the Constitution of India, the added defendants in Money Suit No. 179 of 2009 have impugned the order dated May 24, 2011 as passed by the learned Civil Judge (Senior Division), Sealdah in Money Suit No. 179 of 2009. By the impugned order, learned Trial Court rejected the application as filed by the added defendants for vacating the order of attachment of the suit property which was allowed by the self-same Court vide its order dated March 10, 2010 and the prohibitory order of attachment in respect of the suit property was ultimately issued from the office of the said Trial Court on 10.05.2010.

5. While opposing the instant revisional application, Mr. Roy, learned advocate for the plaintiff/opposite party no. 1 submits before this Court that before the learned Trial Court, the plaintiff/opposite party no. 1 filed Money Suit No. 179 of 2009 as against the opposite party nos. 2, 3 and 4 praying for recovery of the consideration money as paid to the opposite party nos. 2, 3 and 4 who are the original defendants in Money Suit No. 179 of 2009.
6. It is contended by Mr. Roy, learned advocate for the plaintiff/opposite party no. 1 that even if an agreement for sale was entered into by the plaintiff/opposite party no. 1 herein and the opposite party nos. 2, 3 and 4 (the original defendants in the said Money Suit) and pursuant to such agreement, the said defendants who are opposite party nos. 2, 3 and 4 received the entire consideration money, but ultimately, the original defendants of the said suit being opposite party nos. 2, 3 and 4 herein failed and neglected to execute a registered deed of conveyance in favour of the plaintiffs and also failed and neglected to deliver possession of the suit property to the plaintiffs and thus, finding no other alternative the plaintiffs had approached the learned Trial Court by filing the aforesaid Money Suit for recovery of the consideration money as paid to them for purchase of the suit property.
7. Mr. Roy, learned advocate for the plaintiff/opposite party no. 1 further submits that since during the pendency of the said Money Suit No. 179 of 2009, the original defendants who are opposite party nos. 2, 3 and 4 herein

made an attempt to dispose of the suit property as involved in the said Money Suit, the plaintiff being the opposite party no. 1 herein filed an application under Order 38 Rule 5 of the Code of Civil Procedure for attachment before judgment of the suit property which was allowed by the learned Trial Court on March 10, 2010.

8. Mr. Roy, learned advocate for the plaintiff/opposite party no. 1 further submits that after issuance of notice of attachment on 10.05.2010, the present revisionist intervened in the said suit as added defendants and claimed that they had no notice with regard to the prior agreement between plaintiff and the original defendants in respect of the suit property and that they purchased the suit property on August 29, 2009 and got possession of the same on September 16, 2009.
9. It is contended further on behalf of the plaintiff/opposite party no. 1 herein that learned Trial Court is absolutely justified in passing the impugned order thereby rejecting the added defendants' application for vacating the order of attachment as passed on March 10, 2010 since learned Trial Court perceived that in the event, the order of attachment is lifted, there is every chance of the plaintiff's said Money Suit No. 179 of 2009 for recovery of his consideration money would be frustrated and there may be multiplicity of suits and proceedings. Mr. Roy, learned advocate for the plaintiff/opposite party no. 1 thus

submits that it is a fit case for dismissing the instant revisional application.

10. On perusal of the entire materials as placed before this Court, it reveals that admittedly Money Suit No. 179 of 2009 was filed by the plaintiff/opposite party no. 1 herein against the opposite party nos. 2, 3 and 4 before the learned Trial Court for recovery of the sum of money which has been paid by the plaintiff to the original defendants pursuant to an agreement for sale. It has also been placed on record that since the plaintiff apprehended that the original defendants may dispose of the suit property in order to frustrate the claim of the plaintiff, the plaintiff rightly approached the learned Trial Court by filing an application for attachment before judgment as against the original defendants in respect of the suit property which was consequently allowed *ex parte* on March 10, 2010.
11. From the materials as placed before this Court, it reveals that on May 10, 2010, learned Trial Court issued the prohibitory order of attachment of the suit property which the present revisionists being the added defendants came to learn on May 13, 2010 and, thereafter, they have approached the learned Trial Court for adding them as a party defendant and after such application was allowed, they filed the said application for vacating the order of attachment as passed on March 10, 2010. But the same was rejected by the learned Trial Court by the impugned order dated May 24, 2011.

12. From the materials as placed before this Court, it further reveals to this Court that before the learned Trial Court, the added defendants have placed sufficient materials to substantiate that the suit property was conveyed to them by the opposite party nos. 2, 3 and 4 (who are the original defendants in the said Money Suit) on 29.08.2009 and they got possession of the suit property on 16.09.2009. It thus reveals that when the learned Trial Court allowed the prayer of the plaintiff for attachment before judgment of the suit property i.e., on March 10, 2010, much prior to that, the suit property was conveyed to the added defendants i.e. on August 29, 2009. Such being the position, learned Trial Court on March 10, 2010 attached a property, which on the day of issuing of order of attachment did not belong to the original defendants of the said Money Suit.
13. It is settled position of law that in the event, the plaintiff apprehends that the defendants have an intention to frustrate the suit of the plaintiff by disposing of his property during the pendency of the suit, the plaintiff may approach the learned Trial Court for issuance of an order of attachment of the defendants' property under the provisions of Order 38 Rule 5 CPC but such order of attachment must not be in respect of the property of a third party.
14. On careful consideration of the entire materials, it reveals that when the learned Trial Court issued the order of attachment i.e., on March 10, 2010 much prior to that;

the title of the said suit property had been transferred in favour of the added defendants by the original defendants and, therefore, this Court has no hesitation to hold that while issuing the order of attachment in the said Money Suit, learned Trial Court has practically attached the property of a person who was at that material time foreign to the said suit.

15. Such being the position, this Court considers that the impugned order cannot be sustained in the eye of law and is required to be set aside.
16. As a result, the instant revisional application succeeds. Consequently, the impugned order dated May 24, 2011 as passed by the learned Civil Judge (Senior Division), Sealdah in Money Suit No. 179 of 2009 is hereby set aside. Consequently, the order of attachment dated March 10, 2010 as passed by the learned Trial Court stands hereby vacated.
17. Accordingly, the instant revisional application being **CO 2833 of 2011** is hereby allowed and disposed of.
18. Considering the long pendency of the Money Suit No. 179 of 2009, learned Civil Judge (Senior Division), Sealdah is hereby directed to dispose of the aforementioned suit positively within a period of six months from the date of communication of this order. It is also made clear that the time limit as fixed by this Court is mandatorily to be observed by the learned Trial Court and in the event, such order has not been complied with for any justifiable

reason, learned Presiding Officer of the said Court may face necessary consequences.

19. Parties are directed to act upon the server copy of this order duly downloaded from the official website of this Court.

20. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)