

17.7.2023
3
Ct. no. 652
sb

CO 2713 of 2019

**Mira Bibi & Ors.
Vs.
Avijit Mohanta & Ors.**

Mr. Sarbananda Sanyal ...for the Petitioners

Ms. Manali Biswas ...for the Opposite parties

This is an application under Article 227 of the Constitution of India, challenging the order dated 2.1.2019 passed by the learned Civil Judge (Senior Division), 2nd court, Berhampore, Murshidabad in Partition Suit no. 36 of 2006.

The predecessor of the petitioners as plaintiff filed aforesaid suit for partition in respect of the suit property against the opposite parties herein. In the said suit, plaintiff claimed that he has acquired title in the suit property by way of purchase from one, Dulal Chandra Das, but in spite of his request for amicable partition, the defendants refused to effect partition and as such he has filed the suit.

It is admitted fact that the plaintiff and the opposite parties/defendants have a common vendor namely, Dulal Chandra Das from whom they have allegedly purchased their respective shares in the concerned property. The plaintiffs disputed the left thumb impression (LTI) of the

vendor of defendants, Dulal Chandra Das as appearing in the six deeds in favour of different defendants which are marked as Exhibit B,H,K,L,M and P and by which defendants claimed to have acquired title in the suit property.

The petitioner/plaintiffs made an application before the court below for comparison of the LTI of said vendor, Dulal Chandra Das as appearing in the deed of conveyance executed in favour of the petitioner with the LTI of Dulal Chandra Das as appearing in a deed executed by same vendor in favour of one, Md. Mojid Sk.

The opposite parties contested the application on the ground that the said deed in favour of Md. Mojid Sk is not genuine. However, learned court below allowed the said application filed by the plaintiff.

Being aggrieved by that order, the defendants preferred one Revisional Application being C.O. 3635 of 2013 before this court and this court, by an order dated 30th March, 2015 was pleased to allow the said application by remanding back to the learned Trial Judge for consideration afresh. After remand, learned Court below directed the plaintiff to place any document before the court bearing L.T.I of Dulal Chandra Das which can be used for passing necessary order in terms of the order passed in C.O. 3635 of 2013. The Petitioners herein accordingly filed another deed allegedly executed by said Dulal Chandra Das in favour of one Thandi Bewa on

6.4.1988 and prayed for using the said deed for the purpose of comparing the L.T.I of common vendor, Dulal Chandra Das with the deed of the plaintiffs as well as with the deeds of defendants.

The opposite parties filed written objection against the aforesaid application but the Trial court refused to accept said deed for the purpose of comparison in terms of the prayer of the petitioner and by the impugned order, directed the petitioner to take proper steps in terms of the direction passed in C.O. 3635 of 2013.

Learned counsel for the petitioners submits that the Trial court acted illegally by not allowing the said prayer of the petitioners, specifically when the defendants failed to establish grounds of objection regarding legitimacy of the said deed.

It appears that this court, while disposing C.O. 3635 of 2013 was pleased to observe as follows:-

“I have heard the learned counsel for the parties. If the Learned Trial Court feels it necessary to compare the signature of Dulal Chandra Das as appearing on the deeds of conveyance executed in favour of the petitioner with the signature of Dulal Chandra Das appearing on any other deed, the learned court would be at liberty to do so but the other deed and the signature of Dulal Chandra Das on such deed must be an admitted signature and/or proved to be the authentic signature of Dulal Chandra Das. Otherwise the comparison would be meaningless. I find from the deposition that suggestion was given to the witness who sought to prove and tender the document executed by Dulal Chandra Das in favour of Mojid Sk. that the said document is manufactured and the signature of Dulal Chandra Das on such document is forged.

Hence such document is not admitted by the petitioner. The Learned Court below has also not come to a finding in view of such objection of the petitioner that the signature of Dulal Chandra Das appearing on the document executed in favour of Mojid Sk. is genuine and authentic. Without coming to such finding the Learned Court below should not have ordered the comparison to be made.

In view of the aforesaid, the order under revision is set aside. The matter is remanded back to the Learned Trial Judge for consideration afresh. The Learned Judge shall keep in mind that the signature of Dulal Chandra Das appearing on any other document with which the learned judge orders comparison of the signature on the deeds of conveyance executed by Dulal Chandra Das in favour of the petitioner, must be proved to be authentic to the satisfaction of the Court before such an exercise can be done.”

It appears that in the written objection against plaintiff's said prayer, the defendants have specifically stated that the deed in favour of aforesaid Thandi Bewa is not a genuine deed and it was not executed by the said vendor and accordingly, it is clear that the LTI appearing in the deed of Thandi Bewa, is not admitted LTI of the common vendor.

The spirit of the order of this court passed in C.O. 3635 of 2013 is that the other deed or document executed by Dulal Chandra Das must comprise of an admitted LTI and/or proved to be an authentic LTI of common vendor, Dulal Chandra Das. Since the LTI appearing in the deed of Thandi Bewa is not admitted LTI, the court below committed no mistake in not allowing the said prayer made by the petitioners, in terms of aforesaid prayer.

In such view of the matter, C.O. 2713 of 2019 is hereby disposed of with a direction to both the parties to find out admitted L.T.I of Dulal Chandra Das on any document which is admitted by both the parties as authentic L.T.I. of Dulal Chandra Das, within a period of twelve weeks and on filing such documents, L.T.I of which is admitted by both the parties, the court below after considering its authenticity, if he thinks fit for adjudication of suit, will send it for comparison by the handwriting experts with the LTI appearing in the deeds in favour of the parties.

Accordingly, C.O. 2713 of 2019 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)