

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

WPLRT 110 of 2022

**Pradip Kumar Sen
VS.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Syamal Kumar Das,
Mr. Syajit Tripathi
Ms Smita Pal
Ms. Krishna Yadav, Advocate

For the State : Mr. Chandi Charan De, AGP
Mr. Anirban Sarkar, Advocates

For the
Respondent no. 4 : Mr. Tanmoy Mukherjee,
Mr. Shomrik Das, Advocates

Heard & Judgement on: July 19, 2023

DEBANGSU BASAK, J.

1. The writ petition is directed against an order dated February 11, 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 299 of 2020 (LRTT).

2. By the impugned order the tribunal set aside an order of mutation granted by the Block Land & Land Reforms Officer (BL&LRO) as affirmed by the Appellate Authority being District Land Reforms Officer.

3. The Tribunal observed that a suit for partition in which there exists an order of injunction is still pending. The Tribunal noted that the transfer in favour of the writ petitioner herein, may be contrary to a subsisting order of injunction.

4. Learned advocate appearing for the writ petitioner submits that the writ petitioner purchased 1/14th share in an immovable property subsequent to the shares of the parties in a suit for partition being Title Suit No. 169 of 1990, being disposed of. He submits that, thereafter, the writ petitioner applied for mutation. Mutation was granted by the BL& LRO and affirmed on appeal by the concerned DL& LRO. He contends relying upon **(2012) 7 SCC 738 [A. Nawab John & Ors. Vs. V.N. Subramaniam]** and **(2020) 15 SCC 731 [Madhukar Nivrutti Jagtap & Ors. Vs. Pramilabai Chandulal Parandekar & Ors.]** that, at best, the writ petitioner is bound by a decree that may be passed in the suit for partition. He contends that the suit for partition was disposed of. He contends that, the purchase cannot be said to be invalid on the strength of the ratio of the two Supreme Court authorities he cited.

5. Learned advocate for the private respondent submits that the suit for partition is still pending. A preliminary decree in the partition suit was passed in which the shares of the respective parties were declared. There subsists an order of injunction passed by the Civil Court in respect of the suit property involved in the suit for partition.

6. Learned advocate appearing for the private respondent relies upon the judgment and order dated January 19, 2015 passed by co-ordinate Benches in **WPLRT 356 of 2014 [Sri Chandranath Khan vs. The State of West**

Bengal & Ors.] and an order dated **November 11, 2014** passed in **WPLRT 300 of 2014** in support of the proposition that, when there is a civil suit pending involving the question of title to an immovable property, then the concerned BL&LRO and DL& LRO should restrain their hands in respect of such property.

7. The order of injunction restrains parties to the suit from transferring ownership of the immovable property concerned. The immovable property was transferred to the petitioner subsequent to the order of injunction being confirmed. The transferee of the immovable property knew of the order of injunction passed in the civil suit. He draws the attention of the Court to the order passed by the revisional Court dated July 31, 2018 in CO 899 of 2018. He submits that, the issue as to whether, the sale involved herein is in violation of the order of status quo or not is to be decided in an application under Order 39 Rule 2A of the Code of Civil Procedure Code, 2008, which is still pending. Therefore, there is no error in the order passed by the learned Tribunal.

8. State and the private respondent are represented.

9. There is a suit for partition being Partition Suit No. 169 of 1990 pending in the Court of Assistant District Judge, Malda. In such suit, a preliminary decree was passed on August 27, 1996 declaring the shares of the parties in such suit.

10. The partition suit is yet to be finally disposed of. The suit property involved in the suit for partition is yet to be divested by metes and bound or partition effected in accordance with the Partition Act.

11. In the suit being Partition Suit No. 168 of 1990, an order of injunction was passed on December 5, 1990 which was issued in terms of the prayer of the private respondent dated November 28, 1990.

12. The petition for injunction dated November 28, 1990 is in vernacular. Loosely translated, such petition contains a prayer for an order of injunction against the defendants in the suit not to sell the immovable property involved in the suit till disposal of the suit.

13. Ad interim order of injunction in terms of such prayer was granted on December 5, 1990 as noted above. The ad interim order was made absolute on consent by the parties to the suit, till disposal of the suit, on March 31, 1993.

14. It is contended on behalf of the petitioner that on March 31, 1993, the Court directed the parties to maintain status quo with regard to the immovable property concerned. Even then, in the facts and circumstances of the present case, the order of status quo involves an element of injunction restraining transfer of the right, title and interest in respect of the immovable property concerned.

15. Admittedly, the petitioner before us purchased the immovable property concerned from one of the defendants to the suit in whose presence, the order dated March 31, 1993 was passed.

16. The private respondent, as the plaintiff, applied under Order 39 Rule 2A of the Civil Procedure Code, 1908 alleging violation of the order of injunction. Such application is yet to be disposed of.

17. The private respondent also applied for cancellation of the sale deed in the suit for partition which was disallowed. A revision was carried out, in which the order dated February 25, 2019 was passed in CO 899 of 2018.

18. The revisional Court held that, the plaintiffs in the suit for partition does not need any declaration for cancellation and/or otherwise nullifying the deed of transfer in violation of the order of status quo. It observed that any steps taken by any party in any proceeding in violation or contrary to the order passed by a Court is automatically a nullity. No further declaration

is required in this regard. It went on to clarify as to whether the sale effected was in violation of the order of status quo will be decided under Order 39 Rule 2A of the Civil Procedure Code, 1908, which is still pending.

19. In **WPLRT 300 of 2014**, the co-ordinate Bench observed that a decree of a civil Court, particularly when in such suit, State is a party, is relevant for correction of the settlement record of rights.

20. In Chandranath Khan (*supra*), the co-ordinate Bench held that since a civil suit is pending between the parties concerning a dispute relating to title, justice will be subserved, if the record of right is corrected immediately after disposal of the suit.

21. A. Nawab John (supra) considered the scope of Section 52 of the Transfer of Property Act, 1882 on the aspect as to whether a pendente lite purchaser is entitled to be impleaded as a party to the suit and once impleaded what are the grounds on which he is entitled to contest the suit.

A. Nawab John (supra) held that the effect of Section 52 of the Transfer of Property Act, 1882 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be eventually, determined in the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

22. Madhukar Nivrutti Jagtap (Supra) considered **A. Nawab John (supra)**. It is of the view that, the proposition that any transaction on being hit by Section 52, is illegal or void ab initio is not correct. It explains that, the effect of doctrine is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or orders which may be made in the suit.

23. Under the doctrine of lis pendens, mere pendency of a suit will not prevent the parties to the suit from dealing with the property involved in the suit. The transferee would be bound by the decree passed in the suit. Transfer would remain valid subject to the result of the suit. However, if the transfer was made during the subsistence of an order of injunction then the validity of the transfer itself is put into question.

24. In the facts of the present case, there is a suit for partition pending in which there subsists an order of injunction, as noted above. The issue as to whether, the transfers were effected in violation of the order of injunction or not, is still at large in the suit.

25. True, a mutation of a name in respect of an immovable property, in the records of the municipality or the suit, does not *ipso facto vest* any right, title and interest in respect of such property. At best, it denotes the person who is in possession and who is liable to pay the taxes.

26. In the facts of the present case, the question of title of the petitioner to the immovable property concerned is still at large. Although the petitioner claims title through a registered document, the validity therein is in question in the suit for partition.

27. There is an eventuality of the petitioner being held not to be a valid transferee, in view of the existing order of injunction passed in the suit for partition. The other possibility also exists.

28. However, till such time the issue as to the validity of the transaction is pronounced upon by the Court in seisin of the suit for partition, the action of the BL&LRO and the DL&LRO in recording the name of the petitioner in the Record of Rights in respect of the immovable property concerned, cannot be sustained.

29. In such circumstances, we find no irregularity in the order passed by the Tribunal which is assailed in the present writ petition.

30. WPLRT 110 of 2022 is dismissed without any order as to costs.

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

(Debangsu Basak, J.)

32. I agree

(Md. Shabbar Rashidi, J.)