

October 6, 2023
Sl. No.13
Court No.19
s.biswas

CO 2540 of 2023

Sukman Sk.
vs.
Sri Ranjit Basu and others

Mr. Tapash K. Bhattacharya
Mr. Aviroop Bhattacharya

... for the petitioner

The revisional application arises out of an order dated June 28, 2023 passed by the learned Additional District Judge, Fast Track, 1st Court, Malda, in Misc. Appeal No.9 of 2022. By the order impugned, the order of rejection of the application for temporary injunction dated April 11, 2022, passed by the learned Civil Judge (Senior Division), 1st Court, Malda, was upheld. The petitioner filed a suit for declaration and injunction.

The learned lower appellate court, upon considering the backdrop of the case and the documents relied upon by the parties, was of the view that the petitioner could not make out a case for grant of an order of temporary injunction.

The baynanama relied upon by the petitioner, on the basis of which the petitioner claimed title was not produced.

On the contrary, the L.R. record of rights stood in the name of the defendant no.1. The deeds of sale executed in favour of the defendant no.1 by the predecessor of the proforma defendant nos.2 to 5

were produced before the court. In the compromise decree, neither the defendant no.1 nor his vendor were parties. The L.R. records stood in the name of the defendant no.1 in respect of the 55 decimals of land, including the suit property.

Under such circumstances, the learned lower appellate court held that the plaintiff/petitioner failed to prove the prima facie case. The defendant no.1 had produced the relevant deeds of sale and other documents, in order to establish the title and possession in respect of the suit property.

With regard to the order of the learned trial judge, this court finds that the learned judge had recorded that although the foundation of the case of the plaintiff was an alleged baynanama, neither any registered agreement for sale nor the registered baynanama had been produced before the learned court. The defendant no.1 was not a party to the compromise decree. It, prima facie, appeared to the court that the final decree arising out of the alleged compromise had not been passed. The factum of the baynanama and the contract only appeared from the communication between the learned advocate of the petitioner and of the defendant Nos.2 to 5.

Under such circumstances, there was no document before either of the courts on the basis of

which the, prima facie, claim of the plaintiff could be established.

This court is not a fact finding court and cannot reappreciate the findings of both the learned courts below. Upon consideration of the deeds and documents filed by the parties, the learned courts arrived at a conclusion that the plaintiff had failed to prove his case, which would warrant some kind of protection in respect of the alleged enjoyment of the suit property by the plaintiff.

Under such circumstances, the revisional application fails and stands dismissed. The only order that can be passed in this revisional application is that the learned court below should dispose of the suit within a period of eight months from the date of communication of this order.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)