

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

C.O. 2066 of 2014

SRI SWAPAN NATH
Vs.
SRI ANANDA GHOSH & ANOTHER

For the Petitioner : Mr. Arijit Sarkar, Adv.

Heard on : 17.8.2023

Judgment on : 25.8.2023

The Court:

1. This application under Article 227 of the Constitution of India impeaches the Order No. 40 dated 16.7.2013 passed by learned Civil Judge (Junior Division, Jalpaiguri in Title Suit No. 192 of 2008.
2. Briefly stated the petitioner as plaintiff filed a suit for specific performance of contract of an agreement and for permanent injunction being Title Suit No. 192 of 2008. The Opposite party / defendant after entering into appearance filed an application under Section 35 of the Indian Stamp Act, 1899 seeking order to impound the agreement in question. Learned Trial Court after hearing both sides was pleased to allow the prayer of the defendant and the agreement dated 12.2.2006 was directed to be impounded. The said order is under challenge before this Court.
3. Heard Mr. Sarkar, learned counsel appearing on behalf of the petitioner.
4. Despite service none is appearing on behalf of the opposite parties.

5. Drawing my attention to the agreement in question Mr. Sarkar submits that the plaintiff used to occupy the property as tenant under the defendants and pursuant to the agreement in question he surrendered the tenancy to facilitate the development of the property with a specific assurance that the plaintiff would be provided with one well furnished flat measuring 850 sq. ft. super built area free of cost together with 200 sq.ft. floor space including toilet on the ground floor free of cost. It is contended by Mr. Sarkar that in terms of the agreement in question the plaintiff is not required to pay any money to acquire the property. Therefore, the question of payment of requisite stamp duty does not arise in this case which the learned Trial Court failed to appreciate.

6. True it is the agreement demonstrates that owners of the property agreed to deliver or transfer the flat in favour of the plaintiff free of cost but if we consider the spirit of the agreement *prima facie* it appears that the petitioner Sri Swapan Nath was given to understand that he would acquire the right, title, interest or ownership of the flat or otherwise there would be a transfer by sale.

7. In such a situation, the intending purchaser shall be under obligation to pay stamp duty to the government based on circle rate of the area. Therefore, I do not find any reason to interfere with the order impugned.

8. The revisional application does not merit any further consideration and is dismissed, along with application, if any.

However, there shall be no order as to costs.

9. Liberty is given to the petitioner / plaintiff to pay the requisite stamp duty within two months from the date of receipt of report from the Collector, Jalpaiguri if it has not

been received in the meantime, if the report is already with the learned Trial Court within two months from date.

10. Let a copy of the judgement be sent down to the learned Trial Court for information.

(Siddhartha Roy Chowdhury,J)