

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 2613 of 2022

Sri Meghnath Chatterjee

VERSUS

Smt. Anjali Sikdar & Ors.

For the petitioner:

Mr. Animesh Paul, Adv.

for the opposite parties:

Mr. Haradhan Banerjee, Adv.

Mr. Nilmoni Das, Adv.

Mr. Partha Pratim Mukhopadhyay, Adv.

Ms. Saheli Biswas, Adv.

Judgment on: May 10, 2023

Biswaroop Chowdhury, J:

The petitioner before this Court is the defendant in a suit for specific performance of contract and is aggrieved by the Order dated 20.05.2022 passed by the Learned Civil Judge (Senior Division) 3rd Court at Howrah in Title Suit No. 70 of 2012.

The case of the Petitioner/Defendant no-1 may be summed up thus:

1. The opposite party no-1/plaintiff filed a suit for specific performance of contract and injunction being Title Suit No. – 70 of 2012 against the petitioner herein in the Court of the Learned Civil Judge (Senior Division) 3rd Court at Howrah. The opposite party no.2 herein was subsequently added as defendant in the said suit.
2. The petitioner is contesting the said suit by filing his written statement along with counter claim in the said suit. To the said counter claim the opposite party No-1 herein has filed her written statement.
3. The opposite party no-2 is also contesting the said suit by filing his written statement along with counter claim in the said suit. To the said counter claim the opposite party no-1/plaintiff has filed her written statement.
4. The issues have been framed in the suit before the Learned Court below and the suit has reached peremptory hearing stage.

5. The opposite party no-1 as plaintiff witness no-1 has filed her affidavit in chief in the said suit, upon serving a copy of the said affidavit and a list of documents to be filed by the opposite party no-1.
6. During tendering of the documents by the said plaintiff witness No.1, the agreement for sale dated 2.03.2007 was found to be unregistered and the same was declared as impounded and the District Collector Howrah was directed to assess market value of the suit property prevailing in the year 2007.
7. Pursuant to the direction of Learned Trial Court upon the District Collector the District Registrar Howrah assessed market value of the suit property prevailing in the year 2007 and a report to that effect was filed in Court. Upon considering the said report Learned Trial Court by an order dated 10.05.2018 was pleased to direct the opposite party No.1 to pay the stamp duty and penalty totaling to Rs. 18,70,124/- for the purpose of marking of the said unregistered agreement of sale dated 02.03.2007 since impounded.

8. Thereafter the opposite party No.1/plaintiff filed an application under Section 151 of the code of Civil Procedure 1908. By the said application it was contended that due to bona fide mistake or omission, one unregistered agreement dated 02.03.2007 was filed before the Learned Court for marking the said document as Exhibit, however subsequently a registered Bainanama was executed on 02.11.2007 and as such, the opposite party No.1 is not relying the unregistered Bainanama dated 2.03.2007 and thus the opposite party no-1 has prayed for recall of the order dated 10.05.2018 with an observation that the unregistered Bainanama dated 02.03.2007 has got no force till execution of the registered bainanama dated 02.11.2007 in respect of the self same property.
9. The Learned Trial Court was pleased to hear out the said application under Section 151 of the Code of Civil procedure and by an order dated 20.05.2022 was pleased to allow the same by recalling the order dated 10.05.2018.

The petitioner being aggrieved by the impugned order dated 20.05.2022 passed by the Learned Trial Court has come up with this application under Article 227 of the Constitution of India.

It is the contention of the petitioner that the Learned Trial Judge failed to consider that the application under Section 151 of the Code of Civil Procedure 1908 was in effect made for de-exhibiting the unregistered agreement for sale dated 02.03.2007 which has already been impounded by the Learned Trial Court below upon directing to make payment and by dint of the said application the said admitted document cannot be de-exhibited. It is further contended that the Learned Court acted illegally and with material irregularity in relying upon the document dated 2.11.2007 which is not a part of the record and as such cannot be seen even in the eye of law. It is also contended that the Learned Judge failed to consider that without first de-exhibiting the unregistered agreement for sale dated 02.03.2007 from the evidence by way of the procedure contained in the Evidence Act 1872 and also recalling of the order of impounding the said document, the subsequent order dated 10.05.2018 of direction of payment of stamp duty and

penalty cannot be recalled. It is contended that the Learned Judge acted illegally and with material irregularity in passing the impugned order which is contrary to the provisions contained under the Evidence Act 1872.

Heard Learned Advocate for the Petitioner and Learned Advocate for the opposite party no-1, perused the petition filed and the materials on record.

Learned Advocate for the petitioner submits that the prayer made in the application under Section 151 CPC by the plaintiff/opposite party no-1 on which the impugned order is passed is not maintainable in the eye of law. Learned Advocate further submits that it is not open for a party to the suit to exhibit a document in place of another without following Order 7 Rule 14 of the Code of Civil Procedure and the provisions contained in the Evidence Act. Learned Advocate also submits that the Learned Court below erred in making observation that a person cannot be vexed twice when the agreement for sale dated 2-03-2009 and 2-11-2007 were between different persons.

The following decisions are relied upon by Learned Advocate for the petitioner:

Ramanlal Deochand Shah

Vs

The State of Maharashtra and ors.

(Reported in AIR – 2013 S.C. P – 3452)

Biraji and ors.

Vs

Surya Pratap and ors.

Reported in AIR – 2020 S.C. P – 5483.

Learned Advocate for the opposite party no-1 submits that there is no error in the order passed by the Learned Court below. Learned Advocate further produces copy of a purported agreement dated 16th August 2007 between Smt. Anjali Sikdar and Sri Meghnath Chatterjee and submits that the said agreement between the petitioner and opposite party no-1 was tendered for registration on 16/08/2007 but the said registration was kept pending due to

deficit stamp duty. It is on 2-11-2007 that the said agreement was registered before District Sub-Registrar of Howrah. Learned Advocate also submits that as the agreement for sale was registered on 2-11-2007 it is treated to be executed on the said day and the opposite party no-1 is not relying upon the agreement for sale executed on 2-3-2007.

Now in order to consider as to whether the impugned order of Learned Trial Court is sustainable in law it is necessary to consider the relief sought for by the Plaintiff/Opposite party no-1 in the application under Section 151 of the Code of Civil Procedure dated 11/07/2018, and the order passed by the Learned Trial Court.

The opposite party no-1/plaintiff in the application dated 11/07/2018 made before Learned Court below made the following prayer.

‘Hence it is prayed that your Honour may be pleased to recall the order dated 10.05.2018 with an observation that the unregistered Bainanama dated 02.03.2007 has got no force till execution of the register Bainanama dated 2.11.2007 in respect of

the self same suit property and/or pass such other order/orders as your Honour may deem fit and proper.'

Upon plain reading of the prayer made in the application under Section 151 of the Code of Civil Procedure it is clear that the relief claimed is not maintainable at this stage. Without holding trial of the suit on evidence it cannot be concluded as to whether unregistered Bainanama dated 02.03.2007 has got any force till execution of registered Bainanama. A party to the suit has the discretion to rely upon a document and prove the same in accordance with law, but where a document sought to be relied by a party is impounded by Court for the purpose of enquiry to assess the stamp duty and registration charges on the said document, and the stamp duty and registration charge being assessed, the said party in order to make the document admissible in the eye of law is required to pay the stamp duty and registration charge. Thus an order impounding a document with a direction to pay the stamp duty assessed cannot be recalled on the ground that the document has no force till execution of another document.

Upon perusal of the impugned order dated 20/05/2022 it appears that the Learned Judge disposed the application under Section 151 of the Code of Civil Procedure dated 11.07.2018 by observing and directing as follows:

‘It is the case of the plaintiff that he does not rely upon the previous unregistered agreement for sale dated 02.03.2007, which has already been impounded and the plaintiff was directed to file the required stamp duty along with penalty.

However, I consider that a person cannot be vexed twice. As the plaintiff has already paid the stamp duty at the time of registration of the registered agreement dated 2.11.2007 he should not be directed to pay the stamp duty again in respect of the same property and the similar agreement for sale which was unregistered. The payment of stamp duty is for the purpose of marking of document as exhibit on which the plaintiff relies and prays for relief. Since the plaintiff no longer relies upon the unregistered agreement for sale dated 02.03.2007 he should be absolved from paying the stamp duty with penalty on that document.

The document dated 02.11.2007 is the registered agreement to sell on which the plaintiff relies. The said document is duly stamped as per law.

Hence, I consider that the plaintiff need not pay the stamp duty with penalty in respect of the agreement for sale dated 02.03.2007.'

Now upon considering the document mentioned in serial number 1 of the list of documents filed by the plaintiff it will appear that it was an agreement between Ajit Kumar Sikdar the husband of the opposite party no-1 and Meghnath Chatterjee the petitioner herein and the document mentioned in Serial No. 3 is the agreement between Smt Anjali Sikdar the opposite party no-1 and Sri Meghnath Chatterjee the petitioner herein. Upon further perusal of the record and hearing the Learned Advocates it will appear that document in serial No-1 was executed on 2-3-2007 and document in serial no-5, executed on 16/08/2007 and was registered on 2-11-2007. As the parties executing the documents marked in serial no-1 and serial no-3 of the list of documents are different it cannot be held that the plaintiff is vexed twice or plaintiff should not be directed to pay stamp duty in respect of same property and the

similar agreement for sale which was unregistered. Thus the observation made by the Learned Trial Court that the Plaintiff/Opposite party should not be directed to pay the stamp duty again in respect of the same property and the similar agreement for sale which was unregistered, cannot be sustained and the same should be set aside. It is a well settled principle of law that when a document is impounded for the purpose of assessing stamp duty and the stamp duty is assessed by competent authority the said stamp duty is to be paid unless the stamp duty is recalled by competent Authority. It is not open for the Court to observe as to whether stamp duty should be exempted or not on the ground that the document on which stamp duty assessed is not relevant. Unless the order impounding the document by Court is set aside by higher Court the same has to be implemented, in accordance with law. Although the discretion to rely and prove any document is upon the party who files the same but once a document is impounded and stamp duty assessed in accordance with law, the party whose document is impounded, has to pay the required stamp duty assessed if the document is to be relied and proved in accordance in law. However, in the event a party does not want to rely upon a

document impounded he may not pay the stamp duty assessed. In all cases Court which has impounded a document cannot recall the said order merely on the ground that the party whose document was impounded does not want to rely on it or that the document is not necessary. In the facts and circumstances the impugned order passed by the Learned Trial Court cannot be sustained without necessary modification.

Hence this Revisional Application stands disposed. The order dated 20-05-2022, passed by Learned Civil Judge Senior Division 3rd Court Howrah in Title Suit No. 70 of 2012 stands modified to the extent that the opposite party no-1/plaintiff will be at liberty to pay the deficit stamp duty with penalty in terms of order dated 10.05.2018 passed by the Learned Trial Court in the event she intends to rely and prove the document impounded. However in the event the plaintiff/opposite party no-2 does not want to rely on the document impounded stamp duty assessed by order dated 10.05.2018 may not be paid.

It is made clear that in the event document of agreement for sale marked serial no-3 of the document list of plaintiff and

registered on 2-11-2007 is not already exhibited the same may be proved and exhibited by opposite party no-1/plaintiff in accordance with law.

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

Biswaroop Chowdhury,J