

07.02.2023
Sl.No. 150-151
Ct.No.3 ASR
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FAT 657 of 2017
With
FAT 658 of 2017

Sankhadip Laha
VS
Smt. Indubala Laha & Ors.

Mr. Shyamal chakraborty
Mr. Bhusan Jain

...for the appellant

Mr. Soumik Pramanick

...for the respondents

The subject matter of this appeal is premises No. 23, Sankar Halder Lane, Jorabagan, Kolkata- 700005.

A long family litigation is involved.

In 2001, the title suit no. 55 of 2001 was filed before the learned City Civil Court, Kolkata by Basanta Kumar Laha and his wife Padma Rani Laha claiming, inter alia, declaration of their share in the said property. The defendants in the said suit were Indubala Laha, mother of Basanta Kumar Laha, his sister Jharna Paul and his brother Susanta Kumar Laha.

The rights of the plaintiffs in that suit were founded on a deed of settlement on 1984 made by Indubala Laha as settlor. It was in the nature of a trust. Whether the deed of trust was valid or created any interest in the said property is

disputed by the respondents in this appeal. We do not think that this was the subject matter of the appeal and shall not comment or deal with it.

During the pendency of this suit on 28th August, 2001, Basanta Kumar Laha died. Apparently, a few days after his death, Basanta on 20th September, 2001 Indubala Laha purported to cancel the deed of settlement.

Challenging this act, the heirs of Basanta Kumar Laha instituted a second suit in the said court being T.S. No. 115 of 2008. Both the suits were decreed by a consolidated judgment and decree by the said court on 6th September, 2017.

After hearing learned counsel for the parties at considerable length, we are of the view that the impugned judgment and decree ought to be set aside and both the suits be remanded to the learned court below for re-trial and determination.

This for the solitary reason that the subject matter of enquiry before the court was the validity of the deed of cancellation of the settlement or trust. The issues were also framed in that direction.

There was no challenge to the Deed of Settlement in the written statement in either

suit. The issue in respect of its validity was neither raised nor framed.

In the impugned judgement and decree, we find that the court has traversed beyond those issues and have also sought to scrutinise the deed of settlement. On such scrutiny, the court has found the deed of settlement to be invalid or in-operational. If the deed of settlement was found to be invalid there was no issue arising out of the alleged cancellation of that deed to be gone into. On that basis, the suit was decreed.

For this reason, in our opinion, the judgement and decree is thoroughly flawed and is set aside by us.

For the ends of justice, we grant an opportunity to the respondents to make an application, if they so desire in the learned court below within two weeks from date to amend their written statement and file a counterclaim in such manner, as the law would permit them to do.

If such prayer is allowed, the court would also grant opportunity to the parties to discover documents and produce evidence.

There shall be re-trial of the suit on such issues that the court may frame.

We request the learned court below to dispose of the suit within one year from the date of communication of this order.

Further for the ends of justice, we direct that till the suit is disposed of the possession of Jharna Pal in the above subject premises shall not be interfered with by the appellants.

(Biswaroop Chowdhury,J.) (I. P. Mukerji,J.)