

In the High Court at Calcutta

Circuit Bench at Jalpaiguri

**Constitutional Writ Jurisdiction
Appellate Side**

WPA 1102 of 2023

Prashanta Kumar Roy Maitra & Ors.

-versus-

The State of West Bengal & Ors.

Mr. Subrata Basak,Adv.

Mr. H.B.Dubey,Adv.

Mr.M. Rahman,Adv.

Mr. Bikash Singha,Adv.

....for Petitioner.

Mr. Bhaskar Roy Mahashaya,Adv.

Mr. Sannidhya Dutta,Adv.

...for res. nos. 6 & 8

Counsel for the respective parties are present. The plaintiff has filed the present suit praying for cancellation of the name of late Anil Kumar Roy Maitra and his legal heirs, namely Sabita Roy, Priyabrata Roy Maitra, Dhubabrata Roy Maitra and Debprita Bhowmick from the gift dated 23rd August, 1999 being annexure P-2 of the instant application.

Counsel for the respondent raised preliminary objection with regard to maintainability of the instant suit. The Predecessor-in-interest of the petitioners have filed a suit before the learned Civil Judge (Junior

Division), Jalpaiguri being Title Suit No. 103/2002 (Sunil Kumar Roy Maitra vs. Anil Kumar Roy Maitra & Anr.) praying for a decree declaring that the gift being no. 246 of 1999 is void and a decree declaring that the legal heirs, Akshay Kr. Roy Maitra are entitled to have share in LOP Plot No. 52/1 at Masakalabari, G.S. Colony.

The learned Civil Judge (Junior Division), Jalpaiguri by a judgment and decree dated 30th June, 2004 passed a decree declaring that the plaintiffs do get a decree declaring that the legal heirs of Akshoy Kumar Roy Maitra, the plaintiffs is entitled to have share in LOP Plot No. 52/1 and also a decree declaring that the gift deed being No. 246/1999 is void.

Being aggrieved with the said judgment and decree passed by the learned Civil Judge (Junior Division), Jalpaiguri dated 30th June, 2004, the defendant that is Anil Kumar Roy Maitra preferred an appeal before the Additional District Judge, 4th Court, Jalpaiguri being Appeal No. 22 of 2004 and by a judgment dated 25th November, 2005, the learned Additional District Judge had allowed the appeal and set aside the judgment and decree passed by the learned Civil Judge (Junior Division) in TS No. 103 of 2002 and remanded the matter back with a direction to the learned trial Court to

dispose of the suit in accordance with law in the light of the direction passed by the learned Additional District Judge in the said judgment. The predecessor-in-interest of the petitioner has accepted the judgment passed by the learned Additional District Judge and had proceeded with the civil suit pending before the learned Civil Judge, Junior Division being TS No. 103 of 2002 but ultimately the said suit was dismissed for default by an order dated 25th February, 2013. Till date no steps have been taken for restoration of the said suit. Now, the petitioners have filed a fresh suit being Title Suit No. 325 of 2019 before the learned Civil Judge (Senior Division) at Jalpaiguri praying for allotment of shares. In the said suit the petitioners have also prayed for an injunction, the learned Court of Civil Judge (Sr. Division) has granted temporary injunction directing the parties to maintain status quo with regard to the nature, character and possession with respect to the suit property and the suit is still pending.

After considering the above fact, this Court finds that in the year 1999 the predecessor-in-interest of the petitioner had initiated a suit for declaration of the deed as null and void as well as declaration of their right, title and interest over the

property. The petitioners had the knowledge that their predecessor-in-interest has challenged the gift deed in the year 1999 and till 2013 the suit was pending but the same was dismissed for default.

The petitioners have filed a separate suit for the same property in the year 2019 for their share and the same is pending. Now, the petitioners have filed the present writ application praying for cancellation of the gift deed which was the subject matter of the suit filed in the year 1999 and, as such, this Court is of the view that the writ petition filed by the petitioner is abuse of process of law and is not maintainable under law.

WPA 1102/2023 is dismissed with costs assessed at Rs. 25,000/-. The petitioners are directed to deposit the said amount to the State Legal Services Authority within a month from date.

(Krishna Rao, J.)