

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 523 of 2020

With

IA No. CAN 1 of 2023

Motilal Jana

Vs.

Mihir Lal Jana

For the petitioner :Mr. Saurabh Guhathakurata, Adv.
Ms. Nilanjana Sarkar, Adv.
Mr. Abhratanu Sarkar

For the Opposite Party :Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee, Adv.
Mr. Kaustav Bhattacharya, Adv.
Ms. Priyanka Jana, Adv.

Heard On :11.09.2024

Order On :20.09.2024

Bibhas Ranjan De, J. :

1. Challenge is the order dated 07.11.2019 passed by Ld. Additional District Judge, 3rd Court, Howrah in connection with Misc. Appeal No. 187 of 2018 thereby affirming the order

dated 20.01.2018 passed by Ld. Civil Judge, (Junior Division), 4th Court, Howrah in Title Suit No. 342 of 2013.

- 2.** Factual Background of this case is that petitioner/plaintiff filed a suit being no. 342 of 2013 with a prayer for declaration and permanent injunction in respect of subject property depicted in the schedule in the plaint.
- 3.** Specific case of the petitioner/plaintiff is that both the defendants are the sons of one Nagendranath Jana who was the owner of the shop room mentioned in the schedule in the plaint. After his demise both the parties to the suit became the owner and carried on the business. It is further alleged that the landed property of the subject premises was acquired by Howrah improvement Trust on 11.07.1980 by initiating a Case being no. 0441/80/886/4315 where defendant/ opposite party filed claim petition suppressing the claim of the petitioner/plaintiff without his knowledge. Defendant/opposite party herein procured all the relevant documents in his name without the consent of the plaintiff/petitioner.
- 4.** It is alleged that on 02.12.1983 one agreement was executed between the parties wherein both agreed to have compensation in equal share.

5. It is further alleged that on 20.04.2005 there was an agreement executed between the parties with regard to subject shop to the effect that both the parties to this suit will carry on business every four (4) months alternatively.
6. Thereafter, allegedly, plaintiff /petitioner along with his sons went to the subject shop room to take charge of the shop but the sons of the defendant refused to hand over the said shop room.
7. Therefore, plaintiff/petitioner herein filed a suit with a prayer for taking possession of the shop room from the defendant according to deed of agreement dated 20.04.2005 and also with a prayer for declaration that the defendant/opposite party herein will pay half of the compensation award to the plaintiff/petitioner herein along with all the necessary consequential relief.
8. In the suit plaintiff/petitioner herein made the following prayers in paragraph 20 as follows:-

“20. The Plaintiff therefore prays for :-

- (a) Decree for Declaration that the Plaintiff has right to take possession of the Shop Room from the Defendant as per the Deed of Agreement dated 20. 04. 2005 and has/8/- annas share in the said Shop Room and for Declaration that the Defendant will pay half of the compensation Award money;*
- (b) Decree for permanent injunction against the Defendantd for handed over the Shop Room to the Plasintiff for carrying on business under the name and style of M/S, Narayan Stores as per Deed of Agreement dated 20. 04. 2005:*

(c) Decree for Temporary Injunction against the Defendant for Handed over the Shop Room to the Plaintiff for carrying on business under the name and style of M/S, Narayan Stores;
(d) Costs of the suit;
(e) Receiver;
(f) any other relief or reliefs to which the Plaintiff is entitled in law and/or in equity.”

- 9.** Opposite party/defendant entered appearance in the suit denying all the allegations made in the plaint contending inter alia that defendant/opposite party is the exclusive owner of the subject shop room and further contended that in the alleged meeting though he appeared but left the meeting without signing the agreement for the reason that the persons present there belonged to the camp of the plaintiff/petitioner herein and decisions taken there were not impartial.
- 10.** In the suit plaintiff/petitioner filed one application under order 40 Rule 1 of Code of Civil Procedure (for short CPC) with the following prayers:

“ In view of the aforesaid, it is prayed that Your Honour be graciously pleased to appoint a Receiver in respect of the business in question of the plaintiff and the defendant may be allowed to run the business by four months' rotation under the Receiver with direction upon the plaintiff and the defendant to submit accounts in respect of the business in question and/or plaintiff may be appointed as Receiver with direction upon the him to run the. business with four months rotation and the defendant may be appointed as Receiver with four months' rotation strictly in terms of the agreement and the Salish as referred to above till the disposal of the suit.

In view of the aforesaid, it is prayed that Your Honour be graciously pleased to appoint a Receiver in respect of the business in question of the plaintiff and the defendant may be allowed to run the business by four months' rotation under the Receiver with direction upon the plaintiff and the defendant to submit accounts in respect of the business in question and/or plaintiff may be appointed as Receiver with direction upon the him to run the. business with four months rotation and the defendant may be appointed as Receiver with four months' rotation strictly in terms of the agreement and the Salish as referred to above till the disposal of the suit.

AND

Such further and/or other orders be passed, direction and/or directions be given as to this Hon'ble Court may deem fit and proper.

And for this act of kindness, the plaintiff, as in duty bound, shall ever pray."

Argument Advanced:-

11. Ld. Counsel, Mr. Saurabh Guhathakurata, appearing on behalf of the petitioner/plaintiff has contended that both the Ld. Court below did not take any effort to find out the authenticity of the signature of the defendant/opposite party on the agreement dated 20.04.2005 by making any inquiry either by taking recourse of Section 173 of the Evidence Act or by taking assistance of any hand writing expert within the meaning of Section 45 of the Evidence Act.

12. Mr. Guhathakurata alternatively submitted that both the Ld. Court below did not consider that the defendant /opposite

party is guilty of mismanagement of the business by taking entire profit of the business and also denying the right of the plaintiff/petitioner to run the shop for the period of four (4) months by rotation.

- 13.** Per contra, Ld. Counsel, Mr. Debjit Mukherjee, appearing on behalf of the opposite party/defendant has refuted the argument advanced on behalf of the petitioner/plaintiff by referring to the prayers of the plaint and that of the application under Order 40 Rule 1 of the CPC. Mr. Mukherjee, accordingly, has submitted that both the prayer of the plaint as well as petition under Order 40 Rule 1 are identical and therefore prayer of the plaint cannot be considered in disposing the application under Order 40 Rule 1 of CPC.

Analysis:-

- 14.** The suit was filed with a prayer for declaration claiming half share of the subject shop room as well as half of the compensation awarded by the Howrah Improvement Trust at the time of acquiring landed property of the subject premises. After placing both the prayers of the plaint and that of the application under Order 40 Rule 1 in juxtaposition, this Court finds that appointment of receiver will take care of all the reliefs prayed for in the suit, which being a mixed question of

law and fact can only be adjudicated in course of trial. That apart, the issue of disputed signature in the alleged agreement harped on behalf of the petitioner can duly be looked into in course of trial.

- 15.** Therefore, I find no irregularity or perversity in the order impugned in this revision application.
- 16.** As a sequel, the instant civil revision application being no. C.O. 523 of 2020, being devoid of merits, stands dismissed.
- 17.** Interim order, if there be any, stands vacated.
- 18.** Connected applications, if there be, also stand disposed of accordingly.
- 19.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 20.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]