

CO 670 of 2024

(Sri Pradip Koley Vs. Smt. Binapani Koley & Ors.)

**Mr. Indranath Mukherjee
Mr. Sukumar Ghosh
Ms. Moumita Ghosh**

.....For the petitioner

**Mr. Tanmay Mukherjee
Mr. Souvik Das
Mr. K. R. Ahmed
Mr. Rudranil Das**

**.....For the opp. Party nos.
3, 5, 7 - 10**

**Mr. Ayan Banerjee
Ms. Debjani Sengupta
Ms. Paulomi Ghosh**

**.....For the opp. Party nos.
16, 19 - 22, 24, 25**

1. The revisional application arises out of an order October 11, 2023 passed by the learned Civil Judge (Sr. Division), Chandernagore, Hooghly in Misc Appeal No. 16 of 2022. The Misc. Appeal arose out of an order of refusal to grant temporary injunction to the plaintiff/petitioner in Title Suit No. 298 of 2021. The learned Civil Judge (Jr. Division), Additional Court at Chandernagore by the order dated May 7, 2022 refused to pass an order of temporary injunction.
2. Challenging the aforementioned order, Misc. Appeal No. 16 of 2022 was filed. In the said Misc. Appeal, an application under Section 151 of the Code of Civil Procedure for an injunction upon the opposite party nos. 16, 19 to 22, 24 and 25

(defendants/purchasers), from continuing with the construction on the suit plots, was filed. The application was dismissed. The said order has given rise to the revisional application.

3. The plaintiff filed Title Suit No. 298 of 2021 for partition. The plaintiff prayed for a decree for declaration that the plaintiff and the co-sharer/defendants, had 1/11th share each, in the suit property. The defendant no. 1 to 4, 9, 10 and 14, had 1/11th share each, the defendant no. 5 to 8 jointly had 1/11th shares, and the defendant nos. 11 to 13 jointly had 1/11th share in the suit property. Prayer was also made for a preliminary decree along with permanent injunction and other reliefs.
4. The schedule of the suit property comprises of RS Dag Nos. 777, 778 pertaining to RS Khatian No. 421 corresponding to LR Dag Nos. 719 and 721 and RS Dag Nos. 777/843 corresponding to LR Dag No. 720.
5. The petitioner/plaintiff prayed for an injunction in respect of the construction on the suit property alleging that depriving the other lawful co-sharers of their 1/11th undivided share in the property, rampant construction was being raised by the opposite party nos. 16, 19 to 22, 24 and 25 (defendants/purchasers).

6. The opposite parties (defendants/purchasers) filed a written objection and traced their title to a deed executed by Jaladhar Koley. The learned Trial Judge rejected the application for temporary injunction, *inter alia*, holding that the defendants were making construction with permission from the Hooghly Zilla Parishad, on LR plot nos. 719 and 721. The court held that, *prima facie*, it appeared that the said defendants/purchasers were the sole owners of the said plots on the basis of a deed executed by Jaladhar Koley. The Record of Rights were also taken note of by the learned Trial Judge which stood in the names of Binapani Koley and Jaladhar Koley. Permission was granted by the Hooghly Zilla Parishad, for such construction. Under such circumstances, the construction work could not be stopped on those plots over which the defendants/purchasers, could show *prima facie* title by purchase.
7. Challenging the aforementioned order, the Misc. Appeal was filed and an application for injunction was also filed in connection with the Misc. Appeal. It appears that the learned appellate court perused the photocopy of the deed of gift executed by and between Bijay Krishna, Binapani Koley and Jaladhar Koley. The deed of gift executed by Binapani Koley in favour of Jaladhar Koley, was

also perused. Thus, the learned appellate court was of the, *prima facie*, view that the transfer by Bijay Krishna on the basis of deed of gift which was registered at Delhi, showed that Binapani and Jaladhar Koley were the absolute owners of the plot nos. 719 and 721 and the plaintiffs and other co-sharers being the heirs of Bijay Krishna, did not have any right, title or interest in respect of the said properties. Binapani had gifted her share to Jaladhar and Jaladhar became the absolute owner in respect of the said plot nos. 719 and 721. The purchasers, also acquired the plots from Jaladhar.

8. With regard to the shares of other co-sharers some suits had been mentioned in the order impugned, in which some of the co-sharers, though not the plaintiff, had admitted that they did not have any share in plot nos. 719 and 721. On the basis of such *prima facie* finding and also on the basis of the deed registered at Delhi, the prayer for injunction upon the plot nos. 719 and 721 was rejected.
9. The learned appellate court held that the petitioner could not *prima facie* establish either any title or ownership in respect of LR plot nos. 719 and 721.

10. While deciding the issue of irreparable loss and injury, the learned Court was of the view that if the property was alienated during pendency of the suit, the subsequent purchasers would be bound by the decision of the suit as they would be *lis pendens* transferees. The plaintiff would not suffer loss and injury.
11. Mr. Indranath Mukherjee, learned advocate appearing for the plaintiff submits that the deed of gift executed by Bijay Krishna in favour of Binapani Koley and Jaladhar Koley, which was registered at Delhi, had not been produced before the learned trial Court. The title of the purchasers in respect of plot nos. 719 and 721 was also doubtful as subsequently, the same purchasers were buying the shares from the other heirs of Bijay Krishna in respect of plot nos. 719 and 721.
12. Mr. Mukherjee further contended that in a partition suit, all the co-sharers were plaintiffs and defendants and without any partition by metes and bounds and demarcation, the construction of a multistoried building could not be allowed. It would result in further alienation of the property to outsiders. The co-sharers would be saddled with unnecessary litigations. The property would be encumbered and the heirs of Bijay Krishna would be deprived of their property.

13. Mr. Tanmay Mukherjee, learned advocate appearing for some of the co-sharers, who support the plaintiff, submits that without the deed of Bijay Krishna, the learned trial Court could not have passed any order. The appellate court also, could not have accepted the photocopies of such documents which were not before the learned Trial Judge. Mr. Mukherjee next contended that co-sharers should be secured in a particular manner, at least to the extent of their shares.
14. Mr. Ayan Banerjee, learned advocate who appears for the defendants/purchasers and whose clients have constructed a multistoried building in plot nos. 719 and 721, submit that the entire construction was over and many of the flats had been sold. Thus, the question of granting any injunction would not arise.
15. It is contended that Hooghly Zilla Parishad had granted sanction sometime in April, 2021 and the said document had been perused by both the Courts. It is also contended that the deed of purchase from Jaladhar was produced before the Courts and in the recitals, the chain of transfer had been clearly mentioned. Thus, both the Courts were apprised of the execution of the deed of gift by Bijay Krishna in favour of Binapani Koley

and Jaladhar Koley and another deed by Binapani in favour of Jaladhar.

16. The photo copy of the document which was registered at Delhi between Bijay Krishna, Jaladhar Koley and Binapani Koley was also produced before the appellate court.
17. Having heard the learned advocates appearing for the respective parties, this Court finds that both the fact finding Courts had come to a *prima facie*, conclusion that the plaintiff did not have any right, title and interest in respect of LR plot nos. 719 and 721.
18. The building plan was sanctioned in 2021 and the building has been constructed substantially. Both the Courts found from the deed of sale between Jaladhar and the defendants/purchasers that the title could be traced back to the original owner Bijay Krishna. It was found that the defendants/purchasers had, *prima facie*, established the right, title and interest in respect of the LR plot nos. 719 and 721.
19. The learned Court has also protected the plaintiff and other co-sharers to the extent that any sale of the flats to outsiders would be hit by the principle of *lis pendens*. The other contention of Mr. Mukherjee that the defendants/purchasers were not sure of their title in respect plot nos. 719 and

721 in view of the fact that they were approaching other co-sharers to purchase their 1/11th share, has also been taken note of by the learned appellate Court. The learned appellate court observed that suits had been pending, in which some of the co-sharers admitted that they did not have any interest in LR plot nos. 719 and 721.

20. It has also been recorded that one of the sisters of the plaintiff who had entered into an agreement with the defendants/purchasers for sale of her share, filed Title Suit NO. 34 of 2021 *inter alia* for rectification of the deed of sale and for deletion of LR Plot Nos. 719 and 720 from the sale deed.
21. Under such circumstances and in view of the findings as discussed hereinabove, this Court is of the view that the application for injunction was rightly rejected. The *prima facie* case, balance of convenience and inconvenience and irreparable loss and injury have been weighed and rightly answered against the petitioner. The learned Court has already fixed the appeal for final hearing.
22. Before the appeal is heard, the original deed shall be produced for perusal of the Court and for inspection by the contesting parties. In the meantime, a signboard shall be affixed at the site by the purchasers/clients of Mr. Ayan Banerjee, indicating the pendency of the suit. The prayer for

security as raised by Mr. Tanmay Mukherjee will also be decided in the appeal.

23. All steps taken, including the construction, shall abide by the result of the misc. appeal and the learned appellate court is directed to dispose of the misc. appeal within a period of 4 (four) months from the date of communication of this order.
24. It is also made clear that no construction shall be permitted on LR plot no. 720.
25. All the observations made hereinabove are tentative and the learned appellate court shall proceed independently, in accordance with law.
26. Accordingly, the revisional application is disposed of.
27. There shall be no order as to costs.
28. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)