

30.01.2024
Court. No. 19

C.O. 863 of 2023

Ananda Kumar Roy
Vs.
Milan Halder & Ors.

*Mr. Sounak Bhattacharya,
Mr. Sounak Mondal*

...for the Petitioner.

Mr. Debjit Mukherjee

...for the Opposite Parties.

1. The revisional application has been filed challenging an order dated February 9, 2023, passed by the Learned Civil Judge (Junior Division), 1st Court at Diamond Harbour, District 24-Parganas (South) in Title Suit No. 152 of 2017. The defendant No. 2 is the petitioner before this Court. The opposite party No. 1 is the plaintiff in the suit.

2. The opposite party No. 1 filed a suit for declaration of title and permanent injunction against the petitioner, as also the other opposite parties. It was claimed that the predecessor-in-interest of the plaintiffs Dhirendranath Halder and Brojendranath Halder were the absolute owners of the entire plot including the suit property. Brojendranath Halder died without leaving behind any widow or children. Dhirendranath Halder was the only heir and successor of Brojendranath Halder. Accordingly, Dhirendranath Halder became the absolute owner of the entire suit property. He was in possession of the same and his

name was entered in the record of rights. Dhirendranath Halder died leaving behind his two sons namely, Atul Krishna Halder and Ratan Chandar Halder. Ratan Chandra Halder executed a deed of gift, in favour of the plaintiff, which was registered on February 6, 2017. By execution of the said deed of gift, the right, title and interest of the suit property was bequeathed to the plaintiff. The plaintiff had been in possession of the said property since long. It was alleged that the defendants were cunning and dangerous persons. They claimed that Ratan Chandra Halder and Atul Chandra Halder sold the property, including the suit property to Kartick Chandra Baidya and the defendants purchased the property from Kartick Chandra Baidya. On the basis of such claim, the defendants were forcefully exerting right, title and interest in respect of the suit property and were trying to take possession thereof, illegally. They also intimidated the plaintiff. The plaintiff lodged a complaint with a local Police Station on September 7, 2017.

3. According to the plaintiff, Ratan Chandra Halder was still alive and he denied execution of any deed of sale in favour of Kartick Chandra Baidya. There was no such document of sale and even if the same existed, the document was forged, fabricated and void. The plaintiff claimed that according to Ratan, no such deed

was ever executed and such deed was not binding upon the plaintiff. It was further stated that Kartick Chandra Baidya had caused impersonation of some other person as Ratan, at the time of registration, so that the forged and fabricated document, could be registered. The signature and LTI of Ratan on the deed was forged and the defendants could not claim any right, title and interest on the basis of the alleged document.

4. The defendants contested the suit by filing a written statement. The defendants denied such contention. The defendants contended that the plaintiff was a clever and dishonest litigant. The defendants were peace loving citizens. The plaintiff did not have any right, title and interest on any inch of the suit property. The description of the suit property was vague. The Court fees paid was sufficient. Dhirendranath Halder and Brojendranath Halder had right, title and interest in respect of the plots including the suit property. After demise of Brojendra Nath Halder, Dhirendra Nath Halder became sole owner of the property in question. Dhirendra died leaving behind Atul and Ratan. They became owners in khas possession of the property in question. Atul Krishna Halder and Ratan Chandra Halder executed a deed of sale in favour of Kartick Chandra Baidya which was registered on June 6, 1989. Kartick Chandra started

enjoying the properties as owner in possession thereof. He also developed the property and planted various trees and converted the property into bastu land. Subsequently, the property was sold to the defendants.

5. The suit proceeded. As the time of cross-examination of the defendant's witnesses, the plaintiff filed an application for appointment of a hand writing expert and a fingerprint expert to compare the specimen signature and LTI of Ratan Chandra Halder, in the deed dated June 6, 1989, that is, the deed by which the vendor of the defendants had become owner of the property in question.

6. By order dated February 9, 2023 the learned Civil Judge (Junior Division) 1st Court at Diamond Harbour, District 24-Parganas (South) passed in Title Suit No. 152 of 2018, allowed such application.

7. The petitioner is the defendant No.2 in the suit and it is submitted that the order impugned suffers from material irregularity, inasmuch as, the learned Court failed to appreciate that the registered deed executed by Ratan Chandra Halder in favour of the Kartick on June 6, 1989 was a 34-year old document and there was a presumption of correctness of the same. It is further stated that the specimen signature and the LTI of Ratan would have changed over passage of time, as comparison of the same would be detrimental to the defence case. It is further contended

that Ratan Chandra Halder is still alive and he is not a witness in the proceeding. He has not been produced by the plaintiff, as a witness. Thus, there is no formal denial of the execution of such deed of 1989, by Ratan. The plaintiff cannot claim that he had reason to believe that Ratan that did not execute such deed in 1989. The statement of the plaintiff that he has heard from Ratan, the deed was not executed, would not be enough ground for the Court to hold that the LTI and signature of Ratan, should be examined.

8. Mr. Debjit Mukherjee, learned Advocate appearing on behalf of the plaintiff submits that the plaintiff has no other way of proving that Ratan had not executed the deed of sale in 1989, except by way of an expert opinion upon comparison of the specimen signature of Ratan and LTI of Ratan to be obtained by Court, with those which were appearing in the deed of 1989. It is submitted that even if the hand writing may have changed, the LTI would not change and that would be sufficient proof of the fact that somebody else had impersonated himself as Ratan at the time of execution of the Deed of Sale in 1989.

9. Mr. Mukherjee relies on the decision of the Hon'ble Apex Court in the matter of ***Rama Avatar Soni vs. Mahanta Laxmidhar Das and ors***, reported in ***(2019) 11 SCC 415***, in support of his contention that the truth could only be ascertained by way of

scientific investigation. The order impugned was passed in the interest of justice.

10. Having heard the learned Advocates for respective parties, this court is of the view that the order impugned suffers from material irregularity and is liable to be set aside.

11. Admittedly, the deed was executed on June 6, 1989. It is a registered deed. More than 34 years had passed when such application was filed by the plaintiff. It was filed at the stage of cross-examination of the defendants' witnesses. There is a presumption as to the correctness of the document under Section 90 of The Indian Evidence Act, 1872. The plaintiff filed an application for obtaining the specimen signature and LTI of Ratan and prayed before the Court to send the same for expert and scientific opinion, after comparison of the same.

12. Ratan is alive. He is the best person who could have deposed on such issue. Had Ratan been examined and had he specifically deposed that the signatures and LTI were not his, the situation may have been different. Only a statement in the plaint that Ratan had informed the plaintiff that he had not executed the deed, would not be enough reason for the Court to obtain the signature and LTI of Ratan and send the same for comparison and expert opinion. Ratan is neither a party to the proceeding nor a

witness in the proceeding. The ground taken by the court that the opinion of the expert would not be conclusive proof and should be corroborated with other evidence, cannot be a reason to allow such application.

13. The decision in ***Rama Avatar (supra)*** will not be applicable in this case as Ratan is alive and Ratan has not appeared before this Court as a witness. In the referred case, the signature of the testator in the Will was under challenge.

14. Thus, at this stage, the direction to bring Ratan Chandra Halder before the Court for obtaining his specimen signature and LTI, on the basis of the application filed by the plaintiff, is illegal and not in accordance with law. The application was wrongly allowed. It is for the plaintiff to prove his case and he cannot be allowed to fish out evidence.

15. The order impugned is set aside and the revisional application is allowed.

16. Any action taken on the basis of the order impugned, is also set aside.

17. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)