

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL APPLICATION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 894 of 2023

Barun Kumar Dutta & ors.
Vs.
*The Municipal Commissioner, the Kolkata
Municipal Corporation & ors.*

For the petitioner nos. 1 to 4 : Mr. Pinaki Ranjan Mitra
For the petitioner nos. 5 & 6 : G.C. Chakraborty
For the KMC : Mr. Fazlul Haque,
Mr. Piyali Sengupta
For the proposed added opposite party : Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray

Hearing concluded on: 06.03.2024
Judgment on: 18.04.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated November 15, 2022 passed by the learned Civil Judge, Junior Division, Fourth Court at Alipore, in Title Suit No.1762 of 2018.
2. The petitioners as plaintiffs instituted a suit against the opposite party Nos.1 to 4 for a decree of declaration that the property described in Schedule-A of the plaint was the self-acquired property of the deceased mother of the plaintiffs, late Brinda Rani Dutta. Late Smt. Dutta acquired the property on the basis of the sale deed dated November 30, 1964. According to the plaint case, the said deed was executed by the defendant

No.4. The plaintiffs became absolute owner of the Schedule-A property by virtue of inheritance, after their mother's demise.

3. A declaration was sought that the defendant No.3 had no right, title and interest over the suit property. The plaintiffs were in possession of the property. On the strength of an alleged fraudulent deed of sale dated December 24, 2014 executed by defendant No.4 in favour of the defendant No.3, the defendant No.3 claimed right, title and interest in the property in question and denied the title of the plaintiffs. The deed of sale dated December 24, 2014 was void ab initio and not binding on the plaintiffs. A prayer for permanent injunction, restraining the defendant No.3 from taking forceful and illegal possession of the suit property on the basis of the alleged fraudulent deed was also made. Further prayer was that the defendant Nos. 1 and 2, that is, the Kolkata Municipal Corporation and its officials should be restrained from mutating the name of the defendant No.3 in respect of the suit property. Mandatory injunction for deletion of the name of the defendant No.3 from the records of the Corporation was also prayed.

4. In the said proceeding, the defendant No.3 entered appearance and filed an application for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure. By order dated July 12, 2019 the learned Court rejected the said application.

5. In the written statement, the defendant No.3 stated that by virtue of a registered deed of sale dated December 24, 2014, he had purchased 3 cottahs, 3 chittaks and 20 sq. ft. of land together with one bamboo thatched structure with tiled roof, pertaining to R.S. Dag No.657 of Mouza Santhoshpur, Khatian No.1001, J.L. No.22 within the limits of Ward No.103

of the Kolkata Municipal Corporation, being premises No.1A Lake East 6th Road, Kolkata – 700075. The defendant No.3 had taken physical possession and mutated his name in the L.R. records as also in the municipal register. That the defendant No.3 was regularly paying the corporation tax and the land revenue. The plaintiffs were land grabbers, who wanted to grab the property.

6. It is submitted by Mr. Mitra, learned Advocate for the plaintiffs that the plaintiffs filed an application for temporary injunction with an ad interim prayer restraining the defendant No.3 from taking forceful possession of the property on the basis of the alleged fabricated deed dated December 24, 2014 as well as for an order restraining the defendant Nos. 1 and 2 from mutating the name of the defendant No.3 in the municipal records. As a caveat had been filed by the defendant No.3, the prayer for ad interim injunction was heard upon notice to the said defendant and the prayer was rejected on a prima facie finding that the record did not indicate that the property purchased by the defendant No.3 was identical with the one purchased by the mother of the plaintiff.

7. The said order was challenged before the appellate court in Misc. Appeal No.38 of 2022. The learned District Judge, South 24-parganas at Alipore, passed an interim order directing the parties to maintain status quo with regard to the property and the said order was still subsisting. In the first week of September 2021, the plaintiffs found a notice board on the suit property indicating that a G+3 storeyed building would be constructed on the alleged premises No.1A, Lake East 6th Road, Police Station Survey Park. Upon searching the record, the plaintiffs came to know that the name of

M/s Ashima Engineering Works, represented by its proprietor Partha Pratim Roy had been mutated in place of the defendant No.3 in the municipal records. Accordingly, the plaintiffs filed an application for impleading Ashima Engineering as the defendant No.5 in the suit.

8. It is pertinent to mention that the defendant No.4 that is, Modern House and Land Development Company which was the vendor of the mother of the plaintiffs as also the defendant No.3, was not contesting the suit. It is also pertinent to mention that the defendant No.3 did not file any objection to the application for addition of party filed by the plaintiffs under Order 1 Rule 10(2) of the Code of Civil Procedure seeking to implead Ashima Engineering as the defendant No.5. The defendant Nos.1 and 2 being the officials of the Kolkata Municipal Corporation filed a written objection indicating that the property sold to the defendant No.3 and the property sold to the mother of the plaintiffs were not identical. The corporation had assigned a different assessee number to the property purchased by the defendant No.3. Thus, the application for addition of Ashima Engineering should not be allowed. The defendant No.3, vendor of the proposed added party, did not contest such application.

9. The learned Judge took up the application for addition of party for hearing. By the order impugned dated November 15, 2022, the learned Judge rejected the said application on the following grounds:-

- a) The description of the suit property in the plaint and the description of the property in paragraph 14 of the application for addition of party were different. Even if the Ashima Engineering was added as the defendant No.5, the said defendant would not be bound by the result

of the action because the plaintiffs failed to show the nexus between the properties.

- b) The plaintiffs failed to show that without impleading the defendant No.5, the issues which would be framed in the suit could not be effectively adjudicated.
- c) Mere fixing of a hoarding or a sign board on the construction site, would not indicate that the defendant No.5 was directly involved with the suit property.

10. Mr. Mitra, relied on the plaint and submitted that there were averments indicating that the suit property was sold to Kalyan Dasgupta, the vendor of Ashima Engineering. There were sufficient averments to show that the defendant No.4 had sold the same property, incorporating the C.S. Dag number in 1964 to their deceased mother and incorporating the R.S. Dag number in 2014 to the defendant No.3. C.S. Dag No.589 of Mouza Santhoshpur corresponded to R.S. Dag No.675 of Mouza Santhoshpur.

11. According to Mr. Mitra, the plaint case categorically stated that land measuring 3 cottahs 4 chittaks more or less, lying within Mouza Santhoshpur, J.L. No.22 in C.S. Dag No.589 under Khatian No.123, was also described as premises No.375 Santhoshpur Avenue, Police Station Survey Park, Kolkata – 700075 and was the same as premises No.1A Lake East 6th Road, Santhoshpur, Police Station Survey Park, Kolkata – 700075.

12. Mr. Mitra, further submitted that the property sold to Ashima Engineering by Kalyan Kumar Das Gupta, defendant No.3, was acquired by the said defendant on the basis of a fabricated deed of 2014, which was already under challenge in the suit. The plaintiffs prayed for a declaration

that the deed of December 14, 2014 executed by the defendant No.4 (Modern House and Land Development Company) in favour of Kalyan Kumar Das Gupta was void abinitio and a sham paper transaction. Subsequently, Kalyan Kumar Das Gupta claiming to be the owner of the property which he had allegedly acquired on the basis of the deed which was under challenge in the suit, sold the property to Ashima Engineering. Ashima Engineering, thus, stepped into the shoes of Kalyan Kumar Das Gupta. i.e., the defendant No.3 and the subsequent purchaser ought to be added in the proceeding for proper and effective adjudication and to ensure that the order of status quo was maintained by the proposed added defendant as well. Unless Ashima Engineering was added as a party to the proceeding, the order of status quo would not be binding upon the said party and rampant construction would continue. Third party rights would be created. Apart from the Kolkata Municipal Corporation, none of the other defendants contested the said application.

13. Mr. Fazlul Haque, learned Advocate appearing for the opposite party Nos.1 and 2 submitted that the properties were not identical. He referred to the objection filed in the proceeding before the learned Court. The defendant Nos.3 and 4 have not contested the proceeding.

14. Mr. Rabindranath Mahato, learned Advocate appearing on behalf of the proposed added opposite party, intervened in the proceeding. Ashima Engineering was directed to be added in this proceeding and permitted to make submissions. It was specifically submitted by Mr. Mahato, with reference to M/s Ashima Engineering's deed of sale, that the property

purchased by the mother of the plaintiffs were separate, distinct and demarcated, with their boundaries.

15. Mr. Mahato submitted that when the properties were distinct and separate, the decision in the suit would not bind Ashima Engineering. Ashima Engineering would also not be bound by any order of injunction that may be passed in the suit. Mr. Mahato next submitted that the construction was complete and third party rights had been created. Third submission of Mr. Mahato was that even assuming that the suit property was sold in June 22, 2020 by Kalyan Kumar Das Gupta in favour of Ashima Engineering, at best, Ashima Engineering would be treated as a transferee lis pendens and the decision of the suit would be binding on Ashima Engineering. Thus, there was no reason to add Ashima Engineering at the present stage, when the plaintiff had failed to prove that the two properties were identical.

16. Upon conclusion of submission of the respective parties, what falls for decision before this Court is whether M/s Ashima Engineering, a proprietary concern, being represented by its proprietor Partha Pratim Roy of 1, Aravinda Road, Santhoshpur, Police Station Survey Park, Kolkata – 700075 should be added as the defendant No.5 in this proceeding or not.

17. For this court to arrive at a decision, it is necessary to consider certain paragraphs of the plaint which would indicate that the plaintiffs had categorically stated that the property purchased by the mother of the plaintiff from the defendant No.4 were same and identical to the property purchased by Kalyan Kumar Das Gupta. The relevant paragraphs are quoted below:-

“1. That the deceased mother of the plaintiff herein was the sole, absolute and sixteen annas owner of a piece or parcel of land measuring 3 Cottahs 4 Chittaks more or less, comprising Mouza Santoshpur, J.L. No.22, within Dag No.589, under Khatian No.123, within Police Station Jadavpur, now Survey Park, K.M.C. Ward No.103, under Lake Plot Scheme No.188/1, demarcated all the sides i.e. on the north 29’ wide road; on the South land of Dag No.606; on the East 12’ wide road; on the West other Scheme plot no.188 which was within the occupation of Sri Gopal Chandra Das and others, now is within the jurisdiction of the Kolkata Municipal Corporation within Ward No.103, being present K.M.C. Premises No.375, Santoshpur Avenue, Kolkata 700075, having K.M.C. Assessee No.31-103-40-0926-4, which is the subject matter of this suit, and hereinafter referred to as the ‘suit property’ fully described in the Schedule ‘A’ hereunder written, which lies within the jurisdiction of this Learned Court.

2. That the said deceased mother of the plaintiff Binda Rani Dutta became the sole, absolute and sixteen annas owner of the said 'A' Schedule property on the basis of a registered Deed of Sale dated 30th November, 1964 executed by the then owner of the land, namely Modern House and Land Development Company which was since registered under the Company's Act, 1956 represented by one of the representative Anil Chandra Chowdhury having its office at 9, Gariahat Road, Police Station Ballygunge. Kolkata 700019 and after her aforesaid purchase, she had been and has been in peaceful possession of the said landed property providing improvise structure standing thereon and also was in peaceful possession thereof by mutating her name in the records of the Kolkata Municipal Corporation and also in the office of J.L. & L.R.O. Department and also paying taxes and khazna thereof.

3. That after mutation in the official record of the Kolkata Municipal Corporation, in the name of the deceased mother of the plaintiff the said property was known and numbered as 375, Santoshpur Avenue, Police Station Survey Park, Kolkata 700075, under K.M.C. The said property was surrounded by a low height boundary wall made of bricks and cement, by the plaintiff's deceased mother, but due to local problems she could not constructed building over the suit property.

6. That after the incident, the said local people near the suit property who have acquaintance with the plaintiffs long ago, intimated the plaintiffs about the said illegal acts of the defendant. Thereafter the plaintiffs jointly came to the suit property and meet with the defendant no.3 at his residence and had been making vehement objection about the said fraudulent and illegal activities of the defendant no.3 on the said suit property about which the defendant no.3 had or has no legal right and/or interest over the same, rather the plaintiff had or have legal right, title and interest and absolute exclusive and peaceful possession over the suit property since the time of their mother Rani Dutta, who acquired the same on the basis of registered Deed dated 30th November, 1964, to which the defendant no.3 reacted furiously upon the plaintiffs that the plaintiffs

had or have no legal right, title and interest over the suit property as he purchased the property from the Modern Housing Land and Development on the basis of a registered Deed dated 24th December, 2014, executed by Modern House and Land Development represented by its Director Prokash Kumar Singhi i.e. the defendant no.4 herein named as vendor in favour of the defendant no.3 as purchaser therein.

8. That the plaintiff thereafter searched out in the registration office and obtained a Certified copy of the alleged Deed of Conveyance dated 24th December, 2014 from the Registry Office wherefrom it is clearly seen that the said Deed of Conveyance by Modern House and Land Development Company i.e. the defendant no.4 through its Director Prokash Kr. Singhi in favour of the defendant no.3 in respect of the self same plot of landed property as was sold out to the deceased mother of the plaintiff by the said vendor Modern Land House Development Company before hand on 30.11.1964 being the Scheme Plot land No.188/1 by way of illegally and fraudulently changing the dimension/area and also width of the main road from its original/first deed of conveyance dated 30.11.1964.

10. That the plaintiffs state and assert that the defendant no.4 and the defendant no.3 in collusion and conspiracy with each other had completed the alleged transaction fraudulently on 24.12.2014 knowing fully well that there was another registered Deed of Conveyance by and between the defendant no.4 i.e. the land owner and the deceased mother of the plaintiff Brinda Rani Dutta, in respect of the self same property which was described in the Schedule 'A' hereunder written and in existence of the First Deed dated 30.11.1964 in respect of the self same property the second Deed dated 24.12.2014 had or has no force or effect in presence of the first Deed dated 30.11.1964, the said Deed dated 24.12.2014 had or has no force of effect in the eye of law as the said Deed dated 24.12.2014 is no deed in the eye of law and the same are false, fraudulent, void and ab-initio and is a sham paper transaction and is not binding on the plaintiffs.

11. d) That now very recently the plaintiff came to know that the said defendant no.3 with the illegal help and assistance of some of the responsible officer of Kolkata Municipal Corporation authority i.e. the defendant nos.1 and 2 has been most illegally and wrongfully trying to mutate his name in respect of the suit land with the help of the fraudulent and void deed dated 24.12.2014 which was and is already assessed in the name of the original owner, namely smt. Brinda Rani Dutta and after her death the same was assessed in the names of the heirs of the said Binda Rani Dutta i.e. the plaintiff herein named and the said property has assessee No.31-103-40-0926-4 in the record of K.M.C. The said illegal acts of the defendant no.3 is not only illegal but also fraudulent acts and activities done in connivance and instance of some of the responsible officers of K.M.C. Authority for which the plaintiff through his learned Advocate sent a notice under Section 586 of K.M.C. Act, 1980 upon the defendant nos.1 and 2 for the reliefs claimed in the said notice..

(e) That very recently, the plaintiffs received a caveat notice wherefrom the plaintiff came to know that the defendant no.3 sent caveat notice under Section 148A of the Code of Civil Procedure to the plaintiff, praying before your Honour/other court not to pass any ad- interim restraining order against the defendant any apprehended suit filed by the plaintiffs against the defendant no.3 in respect of premises No.1A, Lake East 6th Road, Santoshpur, Police Station Survey Park, Kolkata 700075 and also Premises No.375, Santoshpur Avenue, Police Station Survey Park, Kolkata 700075 i.e. the suit property which is belonged to the plaintiff and the plaintiffs had been and have been enjoying the same on payment of K.M.C. Tax and other outgoing charges for which the plaintiffs have been jointly reasonably apprehending that the defendant no.3 in collusion and conspiracy of the men of the office of the defendant nos. 1 and 2 may mutate his name in the records of the Kolkata Municipal Corporation in respect of the premises No.375, Santoshpur Avenue, Police Station Survey Park, Kolkata 700075 i.e. the suit property by way of fraudulent representing the property which was purchased on the basis of the sale deed dated 24.12.2014 is the self same property of the plaintiffs.

18. A combined reading of the above quoted paragraphs of the plaint would indicate that it was the specific case of the petitioners/plaintiffs that their mother had purchased the land measuring 3 cottahs 4 chittaks more or less, in Mouza Santoshpur corresponding to C.S. Dag No.589 from the defendant No.4. That the defendant No.3, Kalyan Kumar Das Gupta was trying to dispossess the plaintiffs from the suit property as they were not living on the same. The matter was reported to the police authority. The plaintiffs enquired from the registry office and obtained certified copy of the deed of conveyance dated December 24, 2014. From the said deed of conveyance they came to know that the defendant No.4, through one of its directors Prakash Kr. Singhi, conveyed the same plot that was sold to the mother of the plaintiffs, to Kalyan Kumar Das Gupta.

19. In the deed of conveyance of M/s Ashima dated June 22, 2022, the recitals state as follows:-

“AND WHEREAS the said Modern House and Land Development Co. Ltd., the Vendor therein, sold conveyed and transferred all that piece and parcel of land measuring about 3 cottahs 3 chittacks 20 sq.ft. more or less together with 100 Sq.ft. R.T. Shed structure standing thereon, comprised in R.S. Dag No.657, Khatian No. 1001, J.L. No.22, Mozua Santoshpur, Ward No. 103, Borough - XI, Police Station - Survey Park, to one Sri Kalyan Dasgupta, by virtue of a Deed of Conveyance dated 24.12.2014 registered in the office of D.S.R. III, Alipore 24 Parganas and recorded in Book No, CD Volume No.23, pages from 5675 to 5693, Being No. 10249 for the year 2014.

AND WHEREAS by virtue of the said registered Deed of Conveyance Sri Kalyan Dasgupta, the Vendor herein, became the sole and absolute owner of the said land measuring about 3 cottahs 3 chittacks 20 sq.ft. more or less together with 100 Sq.ft. R.T. Shed structure standing thereon, comprised in R.S. Dag No.657, Khatian No. 1001, J.L. No.22, Mozua - Santoshpur, Ward No. 103, Borough - XI, Police Station Survey Park, District 24 parganas (South) and absolutely seized and possessed of the same by mutating his name in the records of the B.L. & L.R.O. vide Mutation Certificate Memo No.18/Mut/4279/BLLRO/ ATM/Kasba/15 dated 19.08.2015 and in the records of the Kolkata Municipal Corporation being Premises No. 1A, Lake East 6th Road, Kolkata 700075, under Assessee No.31-103-24-0601-8 and by paying rents and taxes regularly, morefully described in the Schedule 'A' hereunder written.

AND WHEREAS the said Sri Kalyan Dasgupta, the Vendor herein, also obtained conversion Certificate from the Sali to Bastu from the B.L. & L.R.O. at Kolkata - 700107, vide Memo No. 17/1254 dated 03.03.2017 and desire to construct a multi storied building but he is not financially competent and lacks in experience to raise such building on his said land at the said premises being No.1A, Lake East 6th Road, Police Station Purba Jadavpur now Survey Park, Kolkata 700075, under K.M.C. Ward No. 103, District 24 Parganas (South), morefully described in the Schedule 'A' hereunder written and as such looking for Investor/Developer who would agree to construct building on the said land and invest funds for completion of the said building according to the building plan prepared by the Registered Architect and by obtaining sanction building plan from the Kolkata Municipal Corporation on the terms and conditions to be negotiated and settled between the Vendor and the Developer.”

20. The specific averment in the plaint is that the sale was illegal and fraudulent and the deed was executed by changing the dimensions, area, width of the main road etc. in order to make out an apparent difference in the description of the property sold to defendant No.3, with what was sold to

the mother of the plaintiffs by the first deed of conveyance dated November 30, 1964. It has been specifically stated in paragraph 11(e), that defendant No.3 had filed a caveat praying that no ad interim injunction should be passed in any suit or proceeding that may be filed by the plaintiff against the defendant No.3 in respect of premises No.1A, Lake East 6th Road, Santoshpur, Police Station Survey Park, Kolkata – 700075, which was also premises No.375, Santoshpur Avenue, Police Station Survey Park, Kolkata – 700075, without hearing the defendant No.3. Paragraph 1 of the plaint categorically states that the plot sold to the mother of the plaintiff was the same as premises No.375, Santoshpur Avenue, Kolkata – 700075. Kalyan Kumar Das Gupta, the vendor of Ashima Engineering had filed a caveat, inter alia, stating that no ad interim order in respect of those two premises should be passed by the Court without hearing defendant No.3. The ad-interim prayer was heard by the trial court upon notice to the defendant No.3. There is no hesitation to hold that there are adequate pleadings in the plaint with regard to the properties being identical. The contention is that the property sold to Kalyan Kumar Das Gupta was in turn also sold to Ashima Engineering. That the same property which was purchased by the mother of the plaintiffs was sold to the defendant No.3 and thereafter to the proposed added defendant. The caveat filed by the defendant No.3 also mentions both the properties.

21. However, the above fact and identify of the property is subject to proof in the suit. The plaintiffs being the dominus litis have the right to control the way their suit should progress and also have a right to choose the person against whom they wish to litigate. The plaintiffs claim that even if

the address and holding numbers of the land may have changed since 1964, the suit property, premises No. 375. Santoshpur Avenue and premises No. 1A, Lake east 6th road Santoshpur were the same and identical. Schedule A of the plaint is quoted below:-

“SCHEDULE REFERRED TO ABOVE

ALL THAT piece and parcel of land measuring 3 Cottahs 4 Chittaks more or less, comprising Mouza Santoshpur, J.L. No.22, within Dag No.589, under Khatian No.123, within Police Station Jadavpur, now Park, K.M.C. Ward No.103, under Lake's Plot Scheme No.188/1, demarcated all the sides i.e. on the north 29' wide road; on the South land of Dag No.606 on the East 12' wide road; on the West other Scheme plot no.188, which was then purchased by Sri Gopal Chandra Das and others, now within the Kolkata Municipal Corporation within Ward No.103, being present K.M.C. Premises No.375, Santoshpur Avenue, Kolkata 700075, having K.M.C. Assessee No.31-103-40-0926-4”

22. In the matter of ***Baluram vs P.Chellathangam & Ors.*** reported in ***AIR 2015 SC 1264***, the Hon’ble Apex Court held that a party, though not a necessary party, but may be a proper party whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit. He need not be a person in favour of or against whom the decree was to be made.

23. In the matter of ***Mumbai International Airport(P) Ltd. vs Regency Convention Centre & Hotels(P) Ltd.*** reported in ***(2010) 7 SCC 417***, the Hon’ble Apex Court held that the general rule in regard to impleadment of parties was that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wished to litigate.

24. In ***Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue***, reported in ***AIR 1963 SC 786***, the Hon’ble Apex Court held that there may be parties who could be described as proper parties, that is parties whose presence was not necessary for making an effective order, but

whose presence may facilitate the settling of all the questions that may be involved in the controversy.

25. In the matter of ***Vishal Ashok Thorat v. Rajesh Shrirambapu Fate***, reported in **(2020) 18 SCC 673**, the Hon'ble Apex Court held that a necessary party is one without whom no order could be made effectively; a proper party was one in whose absence an effective order could be made but whose presence was necessary for a complete and final decision on the question involved in the proceeding.

26. The contention of Mr. Mahato that a subsequent purchaser need not be added in the proceeding as he would be bound by the final decree in case the suit succeeds, is not accepted. It is upto to Ashima Engineering whether to contest the suit or not, but the plaintiffs should be permitted to implead the alleged subsequent purchaser for proper and effective adjudication of the dispute. The identity of the property, the right, title and interest of the parties arising out of their individual conveyances etc., are subject to trial. It is also pertinent to mention that the defendant No. 4 did not ever contest the suit and the defendant No.3 did not contest the application for addition of party. The presence of only the Corporation would not enable the Court to completely decide the questions involved.

27. The rejection of the application by the learned Court on the basis of the objection taken by the Kolkata Municipal Corporation that the assessee numbers were distinct and different, was incorrect. It amounted to pre-judging the issue. The identity of the property and whether the same property was sold to the mother of the plaintiffs and to Kalyan Kumar Das Gupta, which in turn was sold to Ashima Engineering, must be decided after

framing of issue and upon trial on evidence. For elucidation of such dispute as regards identity, other provisions of law can be resorted to by the parties at the appropriate stage. At this stage, when the plaintiffs wanted to add the alleged subsequent purchaser as a party to the proceeding, the learned Court could not have rejected the application by coming to a definite finding with regard to the identity of the properties. The plaint case ought to have been appreciated and thereafter the learned Court should have passed necessary orders allowing such prayer for impleading the defendant No.5. It is also pertinent to mention that there was a subsisting order of status quo in respect of the property in question.

28. Moreover, in a writ petition filed by Ashima Engineering, being WPA 8562 of 2023, there is a recording of the writ court that from the document appended at page 8 of the opposition filed by the respondent Nos. 4 to 6, in the writ proceeding, it appeared that the CS plot No. 589 in question could actually correspond to RS Plot No.- 657. The relevant portion of the order is quoted below:-

“From the document appended at page 8, it appears that the CS plot No. 589 in question could actually correspond to RS Plot No.- 657. If that be so, then the injunction passed in respect of the civil suit would cover the plot in question.”

29. The above observation of a competent court also, cannot be totally ignored. As the case of the plaintiffs is that the property transferred to M/s Ashima Engineering was one and the same as was purchased by the mother of the plaintiffs, M/s Ashima Engineering is a proper party in the suit.

30. Under such circumstances, the revisional application is allowed. The order impugned is set aside.

31. The learned Court is directed to implead Ashima Engineering as the defendant No.5 in the suit in terms of schedule A of the application for addition of party as stated in page 9 thereof. Thereafter, the suit shall proceed in accordance with law.

32. There shall be no order as to costs.

33. Parties are to act on the basis of the server copy of this judgment.

(Shampa Sarkar, J.)