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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 950 of 2024

Brahmadev Infrastructure
Vs.
Nilanjan Kumar @ Kongar & Ors.

Mr. Apurba Kumar Ghosh
Mr. Rudranil Ghosh
... For the Petitioner.

1. The instant revisional application has been filed challenging inter alia, the order no.20 dated 21st February, 2024, passed by the learned Civil Judge (Junior Division), 1st Court, Howrah, in Title Suit No. 486 of 2022, whereby the application of a third party for addition of party in the suit has been allowed.
2. Mr. Ghosh, learned advocate appearing in support of the revisional application would submit that the plaintiff had filed a suit for declaration of the memorandum of understanding dated 12th September, 2016 executed between the plaintiff and defendant no.1 is valid, legal, genuine and binding upon the defendants as also for a declaration that development agreement dated 22nd August, 2019 is void, illegal, erroneous, inoperative and not binding. The plaintiff claims to have acquired certain interests in the suit schedule property on the strength of a memorandum of understanding dated 12th September, 2016. At the instance of the

plaintiff, by an order dated 6th April, 2022, the learned court being prima facie satisfied with the case made out by the plaintiff was, *inter alia*, pleased to pass ad interim order of injunction restraining the defendant from alienating and/or creating any third party interest till 5th May, 2022. This interim order, according to the plaintiff, is still valid and subsisting. The plaintiff would submit that although the defendant no.1 had filed written statement yet since, no steps had been taken by the defendants, the suit proceeded *ex parte*. Mr. Ghosh further submits that there is no mention of any execution of any registered deed of gift unto and in favour of the opposite party no.5 in the aforesaid written statement. Despite the aforesaid, an application was filed by the opposite party no.5 claiming interest in the suit schedule property on the strength of a registered deed of gift executed on 9th July, 2021. He would submit that notwithstanding the plaintiff/petitioner objecting to the same by filing written objection, the learned judge by the order impugned has been pleased, *inter alia*, in particular holding that non-mention of the factum of execution of deed of gift in the written statement and written objection filed by the defendant no.1 would not render the same void and invalid has allowed the application. The

plaintiff/petitioner is, in fact, aggrieved by the aforesaid recording in the order impugned.

3. Having heard the learned advocate appearing for the plaintiff/petitioner and having considered the materials on record, including the application filed under Order I Rule 10(2) of the Code of Civil Procedure read with Section 151 thereof by the opposite party no.5, I find that the opposite party no.5 claims to have acquired interest in the suit schedule property on the strength of the deed of gift executed on 9th July, 2021 by the defendant no.1. In the instant case, the deed of gift has been executed prior to institution of the suit. I find that the court has allowed application of the opposite party no.5 by invoking powers under Order I Rule 10(2) of the Code of Civil Procedure. The provisions of Order I Rule 10(2) of the Code of Civil Procedure, *inter alia*, provides that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court

effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. Admittedly in this case, I find that the opposite party no.5 claims to have acquired interest in the suit schedule property and the learned Judge by invoking the powers under Order I Rule 10(2) of the Code of Civil Procedure had allowed the application. I do not find any irregularity in the order impugned. Though the plaintiff/petitioner would submit that the finding reached by the learned Judge as regards the validity of the deed of gift is conclusive, I am of the view that such finding is only tentative and *prima facie*.

4. Having regard thereto and since no case for interference has been made out, the revisional application being CO 950 of 2024 is dismissed.
5. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)