

19th February, 2024
(D/L No.41)
(SKB)

R.V.W.57 of 2023
With
CAN 1 of 2023
In
C.O.631 of 2022

Sk. Hasmat Ali
Versus
Sk. Asak Mahammad
alias Sk. Asak Ali and others

Mr. Rabindranath Mahata,
Mr. Aritra Shankar Ray
... for the petitioner.

Mr. Suprabhat Bhattacharyya,
Mr. Biswajit Das
... for the plaintiffs/O.P. Nos.1 & 2.

1. Both the petitioner/proforma respondent no.2 and opposite party nos.1 and 2/plaintiffs are represented by their respective learned advocates.
2. By filing the instant writ petition for review under Order XLVII Rule 1 of the Code of Civil Procedure, the petitioner has prayed for review of the order as passed by this court on 17th February, 2023 in C.O.631 of 2022 thereby disposing of the said revisional application and affirming the judgment dated 25th February, 2022 as passed in Misc. Case No.18 of 2021 by the learned Additional District Judge, 1st Court, Paschim Medinipur, who by the said judgment affirmed the order No.22 dated 29th January, 2021 as passed in Title Suit No.2887 of 2017 by the learned Civil Judge (Jr. Division), 3rd Court, Paschim Medinipur.
3. Mr. Mahata, learned advocate appearing for the petitioner/proforma respondent no.2 in course of his

submission contended that though scope of a review petition under Order XLVII Rule 1 of the Code of Civil Procedure is very much limited but, in the instant case, some mistake or error occurred while passing the order dated 17th February, 2023 in C.O.631 of 2022 by this court since some material facts have not been placed before this court on the day of passing the order dated 17th February, 2023.

4. In support of the instant review petition, Mr. Mahata, at the very outset, draws attention of this court to the copy of the plaint being Annexure 'P-1' as filed by the plaintiffs/respondent nos.1 & 2 before the learned trial court. Drawing attention to paragraphs 3 to 7 of the said plaint, it is contended by Mr. Mahata that from the pleadings of the plaint, it reveals that it is the plaintiffs' case that plaintiffs and the proforma respondent no.2's father Sk. Wajed Ali was the owner of 59 decimals of land in the suit plot and during his lifetime, the said Sk. Wajed Ali by executing three separate deeds of gift gifted 18½ decimals of land to the present petitioner, 18½ decimals of land to plaintiff no.1 and 22 decimals of land in favour of the plaintiff no.2. It is, thus, contended that in the suit plot i.e. Plot No.96, the plaintiff nos.1 and 2's and proforma defendant no.2's father during his lifetime was divested with all his right, title and interests over the said plot of land.
5. Drawing further attention of this court to the copy of the said plaint, it is contended on behalf of the petitioner that trouble started when the said Sk. Wajed Ali again executed a deed of gift in favour of the defendant no.1 of the said suit in respect of some portion of the suit plot of land, though, at that material point of time, he was not the owner of any portion of the suit property.

6. It is contended by Mr. Mahata that probably due to mistake, such fact has not been brought to the notice of this court while disposing of the revisional application being C.O.631 of 2022, especially, when the present proforma respondent no.2 after execution of the said deed of gift has mutated his name in respect of his gifted portion in the suit plot of land in the Record of Right and he has already applied for conversion of the gifted portion of the said plot of land and further he has also obtained permission from the local Gram Panchayat to make a construction over the said gifted portion of the property which is a part and parcel of the suit property.
7. Mr. Mahata further contended that since by filing Title Suit No.2887 of 2017, the plaintiffs/opposite parties have prayed for a declaration that the subsequent deed of gift does not confer any right, title and interests over the defendant no.1, there cannot be any justification on the part of the learned trial court to put an embargo to make any construction by the proforma defendant no.2 over his portion of land which, however, is a demarcated portion of the suit plot of land. Mr. Mahata thus submits that the mistake which occurred in passing the order dated 17th February, 2023 in C.O.631 of 2022 is apparent in the face of record for which the review petition may be allowed.
8. Mr. Bhattacharyya, learned advocate for the opposite party nos.1 and 2/plaintiffs, however, contended that the case which has been brought on record by Mr. Mahata has been duly considered by the learned trial court as well as by the learned first appellate court and, therefore, under no stretch of imagination it can be said that by mistake the order dated 17th

February, 2023 in C.O.631 of 2022 was passed while disposing of the said revisional application by this court.

9. This court has meticulously gone through the materials of this case including the order as passed by this court on 17th February, 2023 in C.O.631 of 2022. This court has also given its due consideration over the submissions of the learned advocates for the contending parties.
10. Admittedly, while passing the order dated 17th February, 2023 in C.O.631 of 2022, the factum of execution of gift by Sk. Wajed Ali in favour of the proforma defendant no.2 of Title Suit No. 2887 of 2017 in respect of a demarcated portion of the suit plot has not been placed before this court. It appears to this court that while passing the order of injunction dated 29th January, 2021, learned trial court has failed to visualise the effect of the execution of the said subsequent deed of gift which has got no bearing with the prayer of the injunction application. Sufficient materials have been placed, at least *prima facie*, to substantiate that after acceptance of the gift, the proforma defendant no.2/petitioner has recorded his name in respect of the portion of the suit plot of land and he has also made application for conversion of the nature of land which was considered favourably and, thereafter, he started construction over the said portion of land by obtaining sanctioned plan from the local authority.
11. Such being the position, this court finds that definitely a mistake occurred while passing the order dated 17th February, 2023 as passed in C.O.631 of 2022 and such mistake is apparent on the face of record and, thus, the same is required to be rectified by allowing the instant review petition.

12. In view of such, the instant review application as filed under Order XLVII Rule 1 of the Code of Civil Procedure is allowed on contest. The present petitioner being the proforma respondent no.2 in Title Suit No.2887 of 2017 is hereby permitted to raise construction over his portion in Plot No.96 in District-Paschim Medinipur, P.S. Debra, Mouza-Chakkungar, J.L. No.445, Kh. No.108/5, 124 25,26,94/3 strictly in accordance with the sanctioned plan issued by the Prodhan, Debra-II Gram Panchayat, Debra Block, Paschim Medinipur. It is, however, made clear that the proposed construction work of the present petitioner shall be the outcome of the result of Title Suit No.2887 of 2017 and the present petitioner in that event cannot claim any equity over such construction.
13. With the aforementioned observations, the order dated 17th February, 2023 as passed by this court in C.O.631 of 2022 is modified to the extent indicated hereinabove. It is made clear that this order shall not prevent the learned trial court to pass any order of restraint against any of the parties to T.S. No.2887 of 2017, if situation so demands during the pendency of the said suit.
14. Since Title Suit No.2887 of 2017 pending before the learned Civil Judge (Jr. Div.), 3rd Court, Paschim Medinipur has already reached its peremptory stage, learned Trial Court is hereby directed to dispose of the said suit positively within three months from the date of communication of this order without granting any unnecessary adjournments to either sides.
15. All connected applications are accordingly disposed of.

16. Urgent photostat certified copy of this order, if applied for, be delivered to the parties, upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)