

12.11.2024
Ct. No. 5
Sl. No.167
Saikat

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

CO/1031/2024

**Manjuri Chakraborty
Vs.
Chandan Bhattacharjee**

Mr. Asit Kr. Bhattacharya, Adv.
...For the Petitioner

1. Challenging, *inter alia*, the order dated 8th September, 2023 passed by the learned Additional District and Sessions Judge, Fast Track Court, Baruipur in Misc. Appeal No.23 of 2023 arising out of the order No.51 dated 17th May, 2023 passed by the learned Civil Judge (Sr. Division), 2nd Court, Baruipur in Title Suit No.461 of 2019, whereby plaintiff/petitioner's appeal was dismissed on contest, the instant revisional application has been filed.
2. It is the plaintiff's case that suit schedule 'A' property belonged to her father who died on 26th December, 2018. According to the plaintiff, her father was suffering from chronic diabetes since the year 2000.
3. It is also the plaintiff's case that on 30th December, 2016 while taking bath, the plaintiff's father fell down and thereafter was completely bedridden and

remained as such until he breathed his last at the age of 88 years.

4. It is the plaintiff's case that the defendant no.1 refused to permit the plaintiff to enter into the suit schedule property subsequent to the demise of her father.
5. According to the plaintiff, the defendant no.1 the brother of the plaintiff on the strength of a registered deed of gift executed in his favour by **her** father on 9th March, 2016 which was registered on 11th May, 2016, had been claiming that the plaintiff has no interest in her father's estate. The plaintiff claims that she obtained certified copy of the said deed of gift on 12th September, 2018 and as such prior to applying for the certified copy of the deed of gift she was completely in dark about the aforesaid deed of gift.
6. The plaintiff has made out a case that her father did not have the mental capacity to execute the deed of gift and as such the plaintiff has claimed a decree for declaration that the said deed of gift as detailed in schedule 'B' of the injunction application and also in the plaint is manufactured, forged and her father cannot and did not and/or could not execute such deed.

7. The plaintiff has also sought for decree for partition, declaring her 1/3rd share in the father's estate on his demise as mentioned in schedule 'A' of the plaint.
8. Record would reveal that the learned Civil Judge (Sr. Division), 2nd Court, Baruipur, on contested hearing after considering the documents submitted by the plaintiff and the case made out by the plaintiff/petitioner was of the opinion that the plaintiff had failed to prove the existence of any prima facie right and her possession over the suit property and in the facts and circumstances, the application for temporary injunction filed by the plaintiff was rejected.
9. The learned Additional District and Sessions Judge, Fast Track Court, Baruipur, while hearing out the misc appeal examined all the records which revealed neither any illegality nor irregularity in the observation of the learned Civil Judge (Sr. Division), 2nd Court, Baruipur and had accordingly dismissed the same.
10. From the plaintiff/petitioner's case it would transpire that the father of the plaintiff had died on 26th December, 2018 and the plaintiff had come to learn about the existence of deed of gift on 4th September, 2019 and that she did not deny the

factum of execution of the said deed of gift by her father in the favour of the defendant No.1 rather, it was her case that her father did not have the mental capacity to execute the same.

11. Having regard thereto, the learned Additional District Judge came to a finding that in such a case the plaintiff is duty-bound to prove the factum of mental incapacity by adducing cogent evidence in order to get relief in the suit. The deed itself demonstrates that the defendant No.1 agreed to accept the property gifted to him and thus, it is *prima facie* presumed that the defendant No.1 is in possession of the suit property.
12. The learned Judge further arrived at a specific *prima facie* finding that the defendant No.1 had title and possession of the suit property and the plaintiff could not make out a *prima facie* case in her favour. The apprehension expressed by the plaintiff that the defendant No.1 was intending to make construction was also found to be unfounded and following the same the learned Judge did not find any illegality and/or irregularity in the order passed by the learned Civil Judge (Sr. Division), 2nd Court, Baruipur.
13. Having perused the order impugned and having considered the materials on record I find that the

petitioner had failed to make out any *prima facie* case in her favour and the petitioner has also failed to demonstrate any irregularity or illegality in the order passed by the learned Additional District Judge and the learned Civil Judge.

14. In view thereof, I do not find any scope to interfere with the same. The revisional application is accordingly dismissed.

15. However, taking into consideration the suit has been pending since 2019, I direct that the learned Trial Court shall make an endeavour for expeditious disposal of the suit without granting any unnecessary adjournment to any of the parties. 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.)