

Item No.14
13.05.2024
Court. No. 19
GB/
S. Biswas

C.O. 1246 of 2023

Sri Nishi Kumar Samanta
Vs.
Smt. Dali Samanta

*Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee*

...for the Petitioner.

*Mr. Avishek Guha,
Ms. Sonal Agarwal*

...for the Opposite Party.

1. The revisional application arises out of an order dated March 24, 2023, passed by the learned Additional District Judge, Fast Track, 3rd Court at Barasat, District – 24 Parganas (North) in Miscellaneous Appeal No.24 of 2022. The learned appellate court set aside the order of status quo passed by the learned Civil Judge (Senior Division), 1st Court at Barasat dated January 25, 2022 in Title Suit No.963 of 2018 and remanded the matter back to the learned court for further hearing of the application for injunction.
2. The learned appellate court held that the factum with regard to the pendency of Title Suit No.319 of 2017 before the learned Civil Judge (Senior Division), 1st Court at Barasat was not taken into consideration by the learned trial judge while granting the order of status quo. The learned trial judge proceeded on the strength of the allegations of the plaintiff/donor that

the alleged deed of gift was executed on the basis of misrepresentation and fraud practiced by the son-in-law. Title Suit No.319 of 2017 was pending between the petitioner and one Answar Ali for specific performance of an agreement for sale of the selfsame property. The petitioner had amended his written statement by incorporating the factum of execution of the deed of gift in favour of the opposite party/daughter.

3. According to the learned appellate court, those were vital facts which should have been considered by the learned trial judge while granting the ad interim injunction. The appellate court held that on the one hand the petitioner was seeking dismissal of the suit for specific performance on the ground that the property had been gifted to his daughter/opposite party, and on the other hand the same donor challenged the deed of gift executed in favour of the opposite party. The, prima facie, case should have been weighed on the basis of the above facts. On this ground alone, the learned appellate court set aside the order of status quo with regard to nature and character of the suit property.
4. Mr. Partha Pratim Roy, learned advocate appearing on behalf of the petitioner submits that when the executant had challenged the execution of a deed of gift on various grounds, the property was required to

be protected till the suit was adjudicated in final form. Further alienation and change in the nature and character of the suit property would cause irreparable loss and injury and the situation would become irreversible by the time the suit was disposed of.

5. Mr. Guha, learned advocate for the opposite party submits that the learned appellate court, upon taking into consideration the various facts and circumstances and also the averments of the petitioner in the written statement filed in the earlier suit about execution of the deed of gift, had passed an order for fresh hearing of the application for injunction, on a remand.
6. According to Mr. Guha, the suit was filed as an afterthought and no, prima facie, case in favour of grant of any injunction had been made out. The plaintiff was blowing hot and cold. In the suit for specific performance, he had stated that the property was transferred to the daughter. Again, the present suit for cancellation of the deed of gift was filed.
7. The contentions of the parties have been considered. Title Suit No.319 of 2017 which was pending before the learned Civil Judge (Senior Division), 1st Court at Barasat has been withdrawn. Thus, the basis of remand of the matter for fresh hearing of the application for injunction, is no more in existence. The only reason why the learned appellate court deemed it fit to remand the matter for fresh adjudication was

that the pleadings and orders passed in Title Suit No.963 of 2018 and the specific contentions of the petitioner therein, that the property had already been gifted to the daughter, had not been taken into consideration.

8. According to the learned appellate court, the said fact would be important for adjudication as to whether the petitioner had a, prima facie, case to claim any injunction. As the earlier suit was withdrawn by Anwar Ali, the order of remand passed by the learned appellate court for hearing of the injunction application upon taking note of the orders passed in Title Suit No.319 of 2017, has lost its significance.
9. The learned appellate court had not recorded any other reason for setting aside the order of the learned trial judge, apart from the non-consideration of the orders and the submissions of the parties in Title Suit No.319 of 2017.
10. Thus, the order impugned is set aside. No useful purpose will be served by remanding the matter.
11. I find from the order of the learned trial judge that the fact that the plaintiff and Anwar Ali had entered into an agreement for sale, was taken note of. The fact that the suit for specific performance of contract was pending, was also taken note of. The entire suit property was transferred to the opposite party by a registered deed, was also taken note of. As the plaint

case was that the opposite party and her husband had misrepresented to the petitioner and obtained his signature on the alleged deed of gift, the court was of the view that such allegation would have to be proved by leading evidence. Until the suit was disposed of, the property should be protected, for the end of justice.

12. This is not a case where the learned trial judge had not looked into the facts. Subsequently, the opposite party was also added in the suit. Now, the suit has been withdrawn. In the absence of any prior suit, only issue to be decided in the present suit being Title Suit No.963 of 2018 is whether the deed of gift ought to be cancelled. The plaintiff had to prove that the same was a product of fraud or coercion or misrepresentation.
13. In the meantime, the property is required to be protected from alienation, in order to prevent multiplicity of proceedings.
14. Under such circumstances, apart from setting aside the order of the learned appellate court which has become irrelevant to the context, this Court deems it fit to modify the order of the learned Civil Judge (Senior Division), 1st Court at Barasat, passed in Title Suit No. 963 of 2018 to the effect that the defendant/opposite party shall be restrained from creating any third party interest in respect of the property in question and from alienating, or

encumbering the same in anyway, till disposal of the suit.

15. The revisional application stands disposed of.

16. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)