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Ct. 19
08.07.2024

In The High Court At Calcutta
Civil Revisional Jurisdiction
(Appellate Side)
C.O. 2196 of 2024
I.A. No. CAN 1 of 2024 (not in file)
Smt. Sheila Sen & Anr.
Vs.
Runu Dutta

With
C.O. 2198 of 2024
I.A. No. CAN 1 of 2024 (not in file)

Smt. Sheila Sen & Anr.
Vs.
Runu Dutta

Mr. Partha Pratim Roy,
Mr. Soumyadeb Sinha ... For the petitioners.

Ms. Chandra Sekhar Banerjee,
Ms. Riya Banerjee,
Mr. Shamit Dutta,
Ms. Madhumita Saha ... For the opposite party.

These two revisional applications are arising out of the selfsame Title Appeal, as such are taken up for analogous hearing and disposal.

Affidavits-of-service filed on behalf of the petitioners be kept with the records.

Leave is granted to the learned advocate for the petitioners to add the left out parties by amending the cause title of the revisional application. The service of the instant application upon the said parties is dispensed with on the prayer and at the risk of the petitioners.

The opposite party no. 1 had filed a suit being the Title Suit No. 14 of 2017 for a declaration that the deed of gift executed by her in favour of the defendants is null and void and not binding upon her.

The Additional Court of the learned Civil Judge(Junior Division) at Sealdah, District-24 Paraganas(South) by the

judgment and decree dated October 17, 2023 had dismissed the said suit *inter alia* on the grounds that the plaintiff being a party to the impugned deed, cannot maintain a suit for declaration simplicitor to get rid of such deed.

The plaintiff, the opposite party no. 1 herein, aggrieved by the said judgment and decree, has preferred the connected Title Appeal No. 69 of 2023, which is pending before the 2nd Court of learned Additional District Judge at Sealdah, District – 24 Parganas (South).

The Appeal Court below by the Order No. 5 dated February 02, 2024, on an application for injunction filed by the opposite party no. 1, has passed an ad-interim order of injunction directing the parties to maintain *status quo* in respect of nature, character and possession of the suit property till March 02, 2024 subject to the deposit of security of **Rs. 5,00,000/-** (Five Lakhs Rupees only) in the form of cash certificate, fixed deposit of any nationalized bank with the appeal Court below. The said order is under challenge in C.O. 2196 of 2024.

The said order of injunction was extended vide order no. 11 dated June 13, 2024 which is under challenge in C.O. 2198 of 2024.

Heard learned advocate for the parties, perused the materials on record.

The maintainability of a suit determines the *prima facie* case, the basic condition for grant of an order of injunction. The suit was dismissed *inter alia*, on the ground that it is not maintainable. No order of injunction can be passed in aid of an appeal arising out of such a suit, therefore, the impugned ad interim order of

injunction and extension thereof are not sustainable and are accordingly set aside.

The plaintiff/opposite party no.1 however, is at liberty to withdraw the security deposited with the appeal Court below as the condition for grant of the impugned ad-interim order of injunction. If the liberty hereby granted, is availed, the Appeal Court below shall expedite the return of the said security.

C.O. 2196 of 2024 and C.O. 2198 of 2024 are thus disposed of without any order as to costs.

In view of the disposal of the revisional applications, the connected applications being I.A. No: CAN 01 of 2024 and I.A. No: CAN 01 of 2024 are also disposed of accordingly without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)