

16.12.2024
Item No.
AD 9
Saswata

**C.O. 2701 of 2024
CAN 1 of 2024**

**Bibharani Chakraborty
versus
Pijush Chakraborty**

Mr. Partha Pratim Roy
Mr. Sudip Sarkar
Mr. K.P.Santra

...For the petitioner

Mr. Sudeep Sanyal, Sr. Sanyal
Mr. Sukanta Das
Mr. Tutun Das
Mr. Chandrachur Lahiri

...For the opposite party

1. Challenging the order dated 8th July 2024 passed by the Learned Additional District Judge, 3rd Court Paschim Medinipur in Title Suit no. 282 of 2023, thereby affirmed the order of the Trial Judge, in the Misc. Appeal, and in refusing to pass any order of injunction in favour of the petitioner, the instant revisional application has been filed.

2. It is the plaintiff/petitioner's case that the plaintiff/petitioner claims to be the owner in respect of the suit property situated at "*kha*" schedule property forming part of the plaint. It is submitted that the plaintiff/petitioner is an illiterate lady and had been suffering from diverse ailments. The opposite party in the guise of arranging doctor's visit had taken the plaintiff/petitioner to her residence and had illegally and fraudulently got the gift executed in respect of "*kha*" schedule property. Challenging the aforesaid gift as void, a suit has been filed before the Court of Learned Civil Judge (Junior Division), 2nd Court, Paschim Medinipur, *inter alia*, praying for a declaration that the deed of gift executed on 24th March 2010 is null and void, as also for permanent injunction.

3. Simultaneously with the filing of the suit, although the plaintiff/petitioner had filed an injunction application, by order

no. 2 dated 10th May 2023, the Learned Judge had refused the ad interim injunction at that stage. Being aggrieved, the plaintiff/petitioner filed a Misc. appeal which was registered as Misc. Appeal no. 88 of 2023 before the Learned District Judge, Paschim Medinipur. Simultaneously, the plaintiff/petitioner filed an injunction application in connection with the said appeal. The appeal was finally heard and decided by the Learned Additional District Judge, 3rd Court Paschim Medinipur, who by judgment and order dated 8th July 2024, had dismissed the appeal on contest. Challenging the aforesaid order, the instant revisional application has been filed.

4. At the time of admission of the instant revisional application, a Coordinate Bench of this Court by order dated 8th August 2024 was, inter alia, pleased to restrain the opposite party from causing any disturbance to the peaceful possession of the plaintiff/petitioner over the suit property till the end of the month of November 2024. Immediately upon service of the aforesaid revisional application, the opposite party entered appearance and filed a vacating application which was registered as CAN 1 of 2024.

5. On 22nd November, 2024 when the instant application had came up for further consideration, this Court taking note of the submission made by the parties, while granting liberty to the plaintiff/petitioner to file affidavit in opposition to the vacating application, had extended the interim order for a limited period. The matter has since came up for consideration before this Court.

6. At the very outset, Mr. Sanyal, learned Senior advocate appearing in support of the vacating application being CAN 1 of 2024 by drawing attention of this Court to the Record of Rights and the statement made in paragraph 4 of the said application would submit that not only the suit schedule property is recorded in the name of the opposite party but the factum of the execution of deed of gift was all along within the notice and knowledge of the

sisters and brothers of the opposite party. None has come forward to oppose such document. Mr. Sanyal would submit that no order of injunction can be passed to protect the plaintiff/petitioner's possession, especially when the deed of gift which is validly executed and possession had also been made over to the opposite party. He, however, is candid enough to submit that the opposite party is not interested to transfer the suit property in favour of any third party or parties.

7. At this stage, Mr. Roy learned advocate appearing for the plaintiff/petitioner submits that he is only interested to ensure that status quo in the suit property is maintained so as to avoid multiplicity of proceedings.

8. Having heard the learned advocates for the parties, I find from a perusal of the records, it would transpire that the injunction application is yet to be decided and the entire proceedings arise out of refusal on the part of the Learned Civil Judge (Junior Division), 2nd Court Paschim Medinipur to pass an *ex parte* ad interim order. In my view at this stage, it would be prudent having regard to the fact that the injunction application is yet to be disposed of, to permit the parties to approach the Learned Court for the purpose of hearing the injunction application. Let it be recorded that the copy of the injunction application has been made over by the petitioner's advocate to the learned advocate appearing for the opposite party in Court today.

9. Mr. Sanyal, on instruction would submit that the opposite party waives service of the injunction application. He, however, prays for leave to file written objection.

10. Having regard thereto, while permitting the opposite party to file written objection within a period of 4 weeks from date, I direct the Learned Trial Court to hear out and dispose of the injunction application as expeditiously as possible preferably within a period of 3 months from the date of communication of this order.

11. Considering the prima facie case made out, the balance of convenience and noting the fact that the opposite party is at present not interested to deal with or dispose of the suit property, I am of the view that the parties shall maintain status quo as regards possession in respect of the suit property till disposal of the injunction application before the Learned Trial Court. The aforesaid order shall, however, not interfere with the rights of the opposite party to harvest the land and/or enjoy usufructs thereof.
12. Consequentially, the orders passed by the Civil Judge, (Junior Division), 2nd Court Paschim Medinipur on 10th May 2023 and the order dated 8th July 2024 passed by the Learned Additional District Judge, 3rd Court Paschim Medinipur in Title Suti No. 282 of 2023 and in Misc. Appeal No. 88 of 2023 stand set aside.
13. Let the records of the case, as has been informed by Mr. Roy are still lying with the Appellate Court, be sent down, if not already sent down.
14. With the above observations and directions, the civil revisional application being C.O. 2701 of 2024 along with its connected application being CAN 1 of 2024 is disposed of.
15. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)