

14.03.2024

Sl. 123

Ct.No. 652

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. NO. 2210 of 2021

Sk. Saiful Islam anr.

Vs.

Sk. Taidul Islam and ors.

Mr. Sujit Saha

...for the petitioners/plaintiffs

Mr. Ranjan Saha

...for the opposite parties/defendants

The petitioners herein instituted the Title Suit no. 40 of 2015 for declaration of the impugned deed as void and also for permanent injunction against respondent nos. 1 to 5.

The respondent nos. 1 to 3 are contesting the suit by filing written statement.

The petitioners state that at first they filed one petition of interrogatories for discovery in respect of the properties mentioned in the deed dated 16th January, 2013 for the purpose of shortening the litigation. But the trial court on 28th November, 2017 rejected the said petition of interrogatories on the ground that the petitioners have administered the interrogatories in relation to non-suit plot of land though aforesaid deed dated 16th January, 2013 has a reference in the plaint.

The petitioners further submit that on 08.05.2017, they filed one application for appointment of LTI expert, which was also turned down by the learned court below on 08.05.2017.

Thereafter on 30th May, 2019, the petitioners preferred one petition that during evidence the plaintiffs also produced two other deeds of sale which were executed by the predecessors of the plaintiffs/petitioners and the plaintiffs/petitioners prayed to examine the LTI of Sk Abdul Haque, who put his thumb impression on the impugned deed with other two deeds which were marked as exhibit nos. 3 and 4 by Finger Print Bureau of West Bengal. But the learned court below by the order dated 29.11.2019 declined to pass any order to that effect in favour of petitioners.

Thereafter, on 11th February, 2020, the petitioners filed one petition for modification of order dated 29th November, 2019 as in cross-examination in question no. 33 wrong entry was made as 2015 in stead of 2005, when question was put to PW 1/petitioner no. 1 and by such petition the petitioners prayed for modification of the said order.

The learned court below also rejected the said prayer for modification on the ground that the petition for sending the document before LTI expert dated 3rd May, 2019 has already been heard and decided on merit on 18th July, 2017 and so far section 152 of the Code of Civil Procedure is concerned, it provides that for clerical and arithmetical mistakes in judgement, decree and orders arising from accidental slip or omission may be corrected, but as the modification petition do not involve any prayer for clerical or arithmetical mistakes, it cannot be rectified without prejudice to any party.

Being aggrieved by that order, Mr. Sujit Saha, learned counsel appearing on behalf of the petitioners submits that during the period when the alleged deed was executed by father of the petitioner, namely, Sk. Abdul Haque, he was ill and unconscious and was not in a position to execute the impugned deed. He further submits that such deed was obtained from Sk. Abdul Haque under undue influence of respondent nos. 1 to 3 and it was made when said Abdul Haque was in lucid condition. Petitioners further submits that when the impugned deed was made under coercion and undue influence, it can only be decided by aid of opinion from the expert in

respect of LTI put by the donor in the said impugned deed. He further pointed out that the gap between the date of execution of the impugned deed and the date of death of the donor is only three days and for which the deed is also suspicious.

Accordingly, the learned court below was not justified in rejecting the petitioners prayer for modification of the order and the learned court below ought to have allowed the said prayer.

Mr. Ranjan Saha, learned counsel appearing on behalf of the opposite parties/defendants raised strong objection contending that the deed was executed from the Office of the Additional District Sub-Registrar of Panskura, District – Purba Medinipur in presence of witnesses and it was valid deed and the petitioner has no title over the property. Moreover, under section 152 of the Code of Civil Procedure court has very limited scope and the court can only invoke jurisdiction, if he finds any clerical or arithmetical mistakes in judgment, decree or orders or errors arising from any accidentally slip or omission. This is not a case of any clerical or arithmetical mistakes. As such the learned court below had rightly rejected the petitioners prayer for modification of the order.

In this context, the petitioners have relied upon a judgment in the case of S. Perumal and Ors. Versus V. Banupriya reported in 2016 0 Supreme (Mad) 6.

Having considered the facts and circumstances of the case, I find from the order impugned that the learned court below has not committed any error or mistake in observing that prayer for modification of the order is not the appropriate prayer in the present context and accordingly, the order impugned does not call for interference.

C.O. 2210 of 2021 is, accordingly, dismissed.

However, this order will not prevent the petitioners to prefer any application for review in the form of reconsideration of the impugned order before the learned court below and in the event of filing of such application by the petitioners within a period of 30 days from the date of communication of the order, the learned court below will dispose of such application within a period of 30 days thereafter after giving opportunity to both the parties to contest without being influenced by any observation made herein.

Urgent certified photocopy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajoy Kumar Mukherjee,J.)