

29.02.2024

Sl no. 23

Ct no. 652

P.M.

C.O. 2291 OF 2021

Mirza Toushif Ahmed & Ors.

- Vs -

Sk. Anwar Ali & Anr.

Mr. Mahammad Mahmud

Mr. M. S. Mollah

... for the petitioners

Mr. Gour Baran Sau,

Mr. Arshad Hussain

.... for the opposite parties.

Affidavit of service filed by the petitioners is taken on record.

The opposite party No. 1 herein filed a suit for declaration and permanent injunction being Title Suit No. 476 of 2020. Defendants/petitioners are contesting the said suit by filing a written statement. The defendants/petitioners contended that they have acquired right, title and interest in the scheduled property by virtue of inheritance after death of their predecessor in interest Abdul Samir Mirza who was the recorded owner of the property. On 15th March, 2021 the learned Court below passed an order of temporary injunction in the form of status quo in connection with the suit property till disposal of the suit.

It is submitted that before passing the order of injunction the plaintiff being opposite party No. 1

herein who filed the suit transferred the suit property by virtue of deed of gift (Hebanama) on 18.02.2021 in favour of proposed added plaintiff who is his son-in-law. Since the plaintiff who filed the suit lost his ownership after such transfer, the defendants/petitioners filed an application under Section 151 of the Code of Civil Procedure for dismissal of the suit and aforesaid transferee on the other hand made an application under Order 1 Rule 10(2) for adding him as plaintiff, since he has become owner of the suit property by way of aforesaid deed of gift.

Learned Court below after hearing both the parties rejected the defendant's application under Section 151 of the Code and at the same time allowed the donee's (proposed added party) petition under Order 1 Rule 10 of the Code.

I have heard the learned Counsel for both the parties and also perused the order impugned. From the copy of the Hebanama, it appears that the property in question has been transferred by original plaintiffs Sk. Anwar Ali in favour of the added plaintiff S.B.N. Azaharuddin on 18.02.2021.

In such view of the matter the transferee has become necessary party in the suit and as such the

Court below was justified in allowing the application for adding him as party under Order 1 Rule 10 of the Code, since the added plaintiff has acquired right, title and interest in the property by the aforesaid deed of gift and in view of such addition defendant's application under Section 151 of the Code has become infructuous. .

I do not find any illegality or perversity in the order impugned rather I find for effective and conclusive adjudication of the suit, the Court below was justified in allowing the plaintiff to proceed with the suit.

In such view of the matter C.O. 2291 of 2021 stand dismissed. Since the suit is pending for a considerable period of time, the Trial Court is requested to make every endeavour for expeditious disposal of the suit and to make his best effort to conclude the entire proceeding preferably within a period of ten months from the date of communication of this order.

(Ajoy Kumar Mukherjee, J.)