

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

HEARD ON: 21.02.2024

DELIVERED ON: 21.02.2024

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

C.O. 3353 Of 2023

Sri Bhola Paik

Vs.

**Sri Sri Shib Durga Mata Thakurani represented by
its managing and acting
Shebait Sri Ranjit Kumar Sanfui & Anr.**

Appearance:-

Mr. Tanmoy Mukherjee

Mr. Souvik Das

Mr. K. Raihan Ahmed

Mr. Soumava Santra

Mr. Tapas Chatterjee

.....for the Petitioner

Mr. Supratik Syamal

Ms. Somosreedevi Dutta

.....for the plaintiffs/opposite parties

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. As prayed for by learned Advocate appearing for the petitioner, leave is granted to the learned Advocate on record of the petitioner to amend the cause title of this civil revisional application by impleading the left out parties here and now.

2. Mr. Mukherjee, learned advocate appearing for the petitioner files the certified copy of the order dated August 21, 2019 passed by the learned Trial Judge in Title Suit No.1191 of 2019, which is taken on record.

3. This civil order is at the instance of the defendant no.1 in a suit for declaration of title and permanent injunction and is directed against the judgment and order dated May 15, 2023 passed by the learned Additional District Judge, 13th Court at Alipore, District 24 Parganas (South) in Miscellaneous Appeal No.277 of 2019 affirming the judgment and order dated August 21, 2019 passed by the learned Civil Judge (Junior Division), 2nd Court, Alipore, District 24 Parganas (South) in Title Suit No.1191 of 2019.

4. The opposite party No. 1 herein filed a suit for declaration that the deity, Sri Sri Shib Durga Mata Thakurani is the absolute owner in respect of the schedule property and for a permanent injunction restraining the defendants from interfering with the possession of the plaintiff. It has been stated in the plaint that the schedule suit property was previously owned and possessed by Sri Atindra Nath Das, who transferred the same in favour of Sri Sri Shib Durga Mata Thakurani by a registered deed of Chirasthayee patta dated 24th day of Magh 1324 B.S. corresponding to 06th Dey of February, 1917 vide deed no.31 and delivered possession thereof. By the said Deed of Patta, Atindra Nath Das appointed Sri Kauri Charan Sanfui as the sole trustee and shebait of the deity for looking after and managing the seva puja and maintaining the affairs of the deity. Upon the demise of the said Kauri Charan Sanfui, according to the conditions of the deed of patta, his youngest son namely, Bishnupada Sanfui became the sole Trustee and Shebait of the said deity. Thereafter, Bishnupada Sanfui died and upon his death, his sons namely, Ranjit Kumar Sanfui, Shyamal Sanfui, Shib

Sankar Sanfui, Kamal Sanfui, Bimal Sanfui and Tapan Sanfui became the Shebaites of the said deity and was managing and looking after the entire property of the deed including the seva puja of the said deity. Alleging that the defendants were threatening to enter into the scheduled property and attempting to interfere with the possession of the plaintiff in respect of the suit schedule property, the opposite party no.1 herein filed this suit.

5. In connection with the said suit, an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure was filed by the opposite party no.1 herein praying for an order of temporary injunction restraining the defendants and their associates from disturbing the peaceful possession of the plaintiff in respect of the suit scheduled property and/or for restraining the defendants and their associates from entering into the suit scheduled property and/or from dispossessing the plaintiffs from the suit scheduled property or any portion thereof. An ad interim order of injunction in similar terms was also prayed for in the said application.

6. After filing the said suit, the plaintiffs moved the application for temporary injunction and the learned Trial Judge by an order being No.2 (later) dated August 21, 2019 restrained the defendants from dispossessing the plaintiff from the suit property without due process of law till September 20, 2019.

7. Being aggrieved by the said order passed by the learned Trial Judge, the petitioner as well as the opposite party no.2 jointly preferred a miscellaneous appeal being No.277 of 2019 before the learned District Judge, 24 Parganas (South), which was subsequently transferred to the Court of the learned Additional District Judge, 13th Court at Alipore. The learned Additional District Judge, 13th Court at Alipore, by a judgment and order dated May 15, 2023,

dismissed the miscellaneous appeal thereby affirming the judgment and order passed by the learned Trial Judge.

8. By the said order, the learned Court of Appeal below directed the learned Trial Judge to dispose of the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure within the time limit stipulated in the said order.

9. Being aggrieved by the judgment and order dated May 15, 2023 passed by the learned Court of Appeal below in Miscellaneous Appeal No.277 of 2019, the defendant no.1 has approached this Court by filing this civil order.

10. Mr. Mukherjee, learned advocate appearing for the petitioner submitted that the plaintiff/opposite party is claiming title in respect of the suit schedule property on the basis of a forged and manufactured deed. In support of such submission he places reliance upon a certified copy of a deed, which is annexed at page 60 of this civil order. By referring to the schedule of the property mentioned in the deed, which is annexed at page 60 of the civil order, he submits that the deed relates to a different property. He also places reliance upon the complaint made to the police authorities in this regard, as well as, the First Information Report.

11. Mr. Mukherjee, learned Advocate for the petitioner places reliance upon an order dated 13th September, 2023 passed by the Hon'ble Division Bench in F.M.A.T. No.401 of 2023 in the case of **Keshar Chand Padia @ Paria Vs. Smt. Namita Naiya & Ors.** in support of his contention that the appellate court while deciding a miscellaneous appeal against an ad interim order of injunction has to take into consideration the prima facie case relating to forgery and/or fraud having been committed upon the Court. Mr. Mukherjee concluded by submitting that since the plaintiff has practiced fraud upon the Court and has approached

the Court with forged and manufactured documents, the appellate court ought to have considered the effect of the same before relegating the matter before the learned Trial Judge.

12. Mr. Syamal, learned Advocate appearing for the plaintiff/opposite party no.1 submits that the defendants do not have any manner of right, title and interest in respect of the property in question. In support of such contention, he places reliance upon the joint petition of compromise filed by Bishnupada Sapui, as the party of the first part and Lala Lachman Prasad i.e. the predecessor-in-interest of the defendants as the party of the second part before the learned Sub-Divisional Officer at Alipore, District 24 Parganas (South).

13. He further submits that the dispute as to the title in respect of the suit property has to be adjudicated by trial on evidence, which cannot be decided while deciding an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure or by the appellate court while deciding a miscellaneous appeal.

14. Heard the learned Advocates for the parties and perused the materials placed.

15. The sheet anchor of the case of petitioner, is the copy of the deed annexed at page 60 of this revisional application. Mr. Mukherjee would contend that the plaintiff in paragraph 2 of the plaint has specifically stated that the registered deed of patta was recorded in the office of Sub-Registry office at Alipore being Book No.1, Volume 4, pages 8 and 9, being Deed No.31 for the year 1917.

16. Mr. Mukherjee would contend that the opposite parties have obtained a copy of the Deed No.31 for the year 1917, which was registered in the office of Sub-Registry at Behala, which has been annexed at page 60 of this civil revisional

application. A copy of the deed relied upon by the plaintiff/opposite party no.1 herein has also been annexed at page 25 of this civil order.

17. It has been uniformly submitted by the learned advocates for the parties that the hearing in connection with the application under Order 7 Rule 11 of the Code has already been concluded and today is the date fixed for passing orders.

18. Upon going through the deed, relied upon by the plaintiff, this Court finds that the said deed was recorded in S.R.O., Behala Patta Book No.1, Volume 4, pages 8 to 9. However, upon perusal of the Deed relied upon by Mr. Mukherjee, more particularly at page 72, it appears that the deed produced and relied upon by the petitioner herein was registered in Book No.1, Volume 1, Pages 37 – 48 being No.31 of the year 1917. The properties which are the subject-matter of the said deeds are different.

19. No material has been produced before this Court to show that there is no existence of any recording of any deed in SRO, Behala Patta Book No. 1, Volume No. 4 at pages 8-9 in the year 1917. The document annexed at pages 60 onwards of the revisional application prima facie appears to be a copy obtained from Book No.1, Volume No.1, whereas the copy of the deed relied upon by the plaintiff was recorded in Patta Book No.1, Volume No.4. In the absence of any evidence that there is no existence of SRO Behala Patta Book No.1, Volume No.4 or that the deed relied upon by the plaintiff is not the one which has been recorded in Patta Book No.1, Volume No.4 for the year 1917, this Court is not inclined to accept the contention of Mr. Mukherjee that a prima facie case relating to forgery and/or fraud has been made out by the petitioner herein.

20. The petitioner is claiming right, title and interest from Lala Lachman Prosad. It appears from the materials placed that a dispute cropped up on an

earlier occasion between Bishnupada Sanfui and Lala Lachman Prosad with regard to possession of the property and the predecessor-in-interest of the respective parties filed a compromise petition before the S.D.O., Alipore. It appears from the said compromise petition that Lala Lachman Prosad admitted that the property belonged to the deity by virtue of the deed which has been relied upon by the plaintiff before the learned Court below. Lala Lachman Prosad also admitted that his name was wrongly recorded in the settlement records in respect of the disputed property and also that he had no right, title, interest and possession of the same. The existence of the registered deed of patta was only acknowledged by Late Lachan Prosad. The said compromise petition cannot be said to be an instrument which purport or operate to create, assign or extinguish any right, title or interest to or in an immovable property. It is also well-settled that an entry in the Record of Rights neither creates nor extinguishes any right in respect of an immovable property. An admission to the effect that recording in the Record of Rights was erroneous does not make the compromise petition a compulsorily registrable instrument. Therefore, this Court is not inclined to accept the contention of Ms. Mukherjee that the comprehensive petition, being an unregistered instrument has no effect in the eye of law.

21. Record further reveals that the learned District Judge at Alipore in Misc. Case No. 277 of 2012 granted permission to sell the debutter property by placing reliance upon the deed of patta executed by Atindra Nath Das in favour of the deity.

22. In view of the aforesaid materials available in the records, this Court is not inclined to accept the contention of Mr. Mukherjee that a prima facie case relating to forgery and/or fraud having been committed upon the Court has been

made out merely on the basis of the reply to the information sought under the provisions of the Right to Information Act, the deed produced by the petitioner and the First Information Report.

23. Deity has approached the Court to protect the property from forceful encroachment. The plaintiff has made out a *prima facie* case to go for trial. The balance of convenience and inconvenience is in favour of the plaintiff and the plaintiff will suffer irreparable loss and injury unless an interim protection is granted in its favour. The learned Trial Judge rightly took note of the aspect of urgency while passing the ad-interim order.

24. The learned Court of appeal below rightly noted the limited scope of a Miscellaneous appeal arising out of an ad-interim order of injunction. The learned Court of appeal below also rightly observed that unless the suit property is preserved in its actual state, the purpose of the suit will be frustrated and it will give rise to multiplicity of proceedings.

25. It is well-settled that the scope of an appeal against an *ex parte* ad-interim order of injunction is limited. There is also no quarrel to the proposition of law laid down by the Hon'ble Division Bench in ***Keshar Chand Padia @ Paria*** (*supra*) that in exceptional circumstances, the Court may permit the appellant being the defendant, who suffered such an order to bring the facts or the plea of defence before the appellate Court. In that case, the Hon'ble Division Bench noted that the two death certificates produced before the Court appears to be inconsistent and contrary to each other. On the basis of such finding, the Hon'ble Division Bench observed that the moment, *prima facie*, case relating to forgery and/or fraud having been committed upon the Court is made out, it brings the case within the exception and, therefore, there is no impediment on

the part of the Court to stay the operation of the order as a wrong doer cannot reap the benefit of his own wrong. The facts of the case in ***Keshar Chand Padia @ Paria*** (*supra*) being distinguishable, this Court is of the considered view that the same do not have any manner of application to the case on hand, as this Court has already observed that the petitioner has failed to make out a prima facie case of forgery.

26. Therefore, this Court holds that the learned Court of appeal below was right in not interfering with the order of the trial judge while passing a direction upon the learned Trial Court to dispose of the application for temporary injunction within the time limit stipulated therein.

27. Before parting, this Court makes it clear that the observations made in this order are only prima facie for the purpose of supporting the conclusions arrived at by this Court while deciding the civil order.

28. With the above observation and direction, the civil order stands disposed of.

29. There shall be, however, no order as to costs.

30. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)