

39 05.02.24

Ct. No. 04

akd

F.M.A.T. 501 of 2023

CAN 1 of 2023

CAN 2 of 2023

Mrs. Mahua Bhaduri

Vs.

Sri Utsav Bhattacharya.

Mr. Ayan Poddar,

Mr. Soham Dutta.

... for the appellant.

Mr. Rajdeep Bhattacharya,

Mr. Debashis Banerjee.

... for the respondent.

Leave is granted to the learned Advocate on record of the appellant to correct the valuation statement put in the Memorandum of Appeal here and now.

Re: CAN 1 of 2023

The Stamp Reporter has indicated that the instant appeal is filed 126 days beyond the last date of limitation provided therefor.

It is averred in the instant application that the learned Advocate on record of the appellant was under the impression that the impugned order is susceptible to be challenged in the revisional jurisdiction and, in fact, filed an application under Article 227 of the Constitution of India (C.O. 1922 of 2023) before this Court. The said revisional application was taken up on 3rd October, 2023 and was dismissed as not maintainable; within a span of 13 days from such date the instant appeal is filed.

Considering the aforesaid explanations having offered, we find that the appellant/petitioner was prevented by sufficient cause in not preferring the instant appeal in time.

Accordingly, the application for condonation of delay being CAN 1 of 2023 is allowed.

Office is directed to formally register the appeal.

Re: CAN 2 of 2023

We are unable to comprehend the findings recorded by the Trial Court in relation to coparcenary concept when the appellant claimed title on the strength of a purported deed of gift executed by her mother in respect of the said property and filed a suit for recovery of possession against her brother.

Initially an ad interim order of injunction was passed restraining the respondent from creating any third party interest in respect of the suit premises but by the impugned order the said application for temporary injunction is dismissed on the basis of the findings as recorded in the opening sentence of this order.

Admittedly the property stood in the name of the mother and she alleged to have executed a deed of gift in favour of the appellant.

On the other hand, the respondent took a stand that the mother was a housewife and the property was purchased by his father in the name of the mother and, therefore, the mother cannot acquire an absolute right, title and interest over the suit property. The respondent also filed a suit for partition together with a declaration that the purported deed of gift is void, inoperative and to be delivered up and cancelled.

It appears that both the suits are filed in different Courts within the judgeship of District 24-Parganas.

The plea was taken that the Court before whom the suit is filed by the plaintiff/appellant lacks territorial jurisdiction, but the suit filed by the respondent was transferred by the District Judge invoking powers under Section 24 of the Code of Civil Procedure so that both the suits may be heard analogously.

The core issue involved in the aforesaid suits is whether the father of the parties was the real owner and the mother being a name lender and the deed of gift executed by the mother in favour of the appellant herein is valid and legal and conveys right, title and interest in her favour. Such being the core issue, the question of coparcenary concept is alien and does not germane from the cause of action pleaded in both the suits.

Even if the father is regarded as a real owner or the mother, the property cannot be held in coparcenary and the nuances of law in relation to a coparcenary property cannot be brought therein. Furthermore there is a serious invasion on the title of the respondent on the strength of the purported deed of gift and unless a final adjudication is made in this regard, the findings made by the Trial Court that the property remained a coparcenary property would vitally affect the decision to be taken at the time of final hearing.

It is a trite law that the Court should avoid in making any finding at the interlocutory stage, which would finally determine the lis or render the trial a mere exercise.

We, therefore, do not find that the findings made by the Trial Court can be supported.

The impugned order is thus set aside.

The application for temporary injunction filed by the appellant before the Trial Court is allowed.

The respondent is restrained from creating any third party interest or encumbering and alienating the suit property in any manner till the disposal of the suit.

With the above observations, the appeal and CAN 2 of 2023 are disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)