

16.1.2024
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Ct. no. 652
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C.O. 4230 of 2018

**Amarendra Nath Das & Anr.
Vs.
Subimal Chandra Das & Ors.**

Mr. Tanmoy Mukherjee
Mr. Pratap Sanfui
Mr. Soumava Santrafor the Petitioners

Ms. Sohini Chakraborty
Mr. Manoranjan Jana ...for the Opposite parties

This is an application under Article 227 of the Constitution of India, preferred against order no. 162 dated 9th August, 2018 passed by learned Additional District Judge, First Track court-II, Cota, Purba Medinipore in Title Appeal no. 02 of 2005.

The petitioners contended that the opposite party no. 1 as plaintiff filed a suit for declaration and partition against the petitioner herein and other opposite parties being Title Suit no. 6 of 1993. Defendant nos. 15 and 16 contested the said suit by filing written statement and in the written statement, the petitioners specifically stated that the defendant no. 14 in the said suit namely Nanibala is not the wife of Murari Das and the real wife of Murari Das namely, Nanibala died long back in the year 1983 prior to the alleged execution of deed in favour of the plaintiff relying of which deed, plaintiff has filed the suit. In the written statement, the petitioners

have also taken a specific plea that the plaintiff by imposter as some lady as Nanibala has wrongfully procured the alleged deed on the basis of false personification.

The said suit was ultimately heard by the court below who passed a preliminary decree on partition against the defendants in respect of Kha schedule property to the plaintiff and the trial court further declared that the plaintiff has right title and interest over the KA schedule property and the plaintiff's separate possession on partition by metes and bounds also declared.

Being aggrieved by the said judgment, the defendant/petitioners preferred appeal before the first appellate court being Title Appeal no. 130 of 2000. During pendency the said appeal, the petitioners herein filed one application under Order VI rule 17 of the Code of Civil Procedure seeking amendment of written statement along with one application under Order XXVI Rule 10A of the Code inter alia praying for scientific investigation as per the points mentioned in the said application.

However, the learned court below after hearing both the parties, was pleased to reject both the applications filed by the petitioner for seeking amendment as well as scientific investigation on contest.

Being aggrieved by that order, learned counsel for the petitioners submits that presently he is not pressing the challenge made against order of refusal in connection with prayer for amendment of written statement, since it is not necessary but he is pressing order regarding refusal of defendant's prayer for scientific investigation stating that the defendants in their written statement has categorically taken a plea that the original Nanibala executed deed in favour of the defendant on 7.12.1982 and she died in 1983 but the present Nanibala who have been impleaded in the present suit is not the wife of Murari and someone has been shown as Nanibala by way of wrong personification for the purpose of execution of the deed in favour of the plaintiffs in the year 1989. He further submits that said Nanibala who has been impleaded in the suit have filed Vakalatnama wherein she had put her LTI. He further submits that for adjudication as to whether the present Nanibala who has filed the Vakalatnama in the suit is actual Nanibala or not, her LTI appearing in Vakalatnama is required to be sent for comparison under scientific investigation with the LTI appearing in the deed which was allegedly executed in favour of the plaintiff in the year 1989.

He further submits that the court below while rejecting the prayer for scientific investigation, had not assigned any reason. Though there is sufficient

averment in the written statement challenging plaintiff's deed but the court below erroneously observed that there is no sufficient averment in the pleading stating plaintiff's deed as forged one. Accordingly, he has prayed for setting aside the order impugned and prayed for allowing the defendant's prayer for scientific investigation as sought for.

Ms. Chakraborty, learned counsel for the opposite parties raised strong objection contending that the petitioners/defendants have described the Nanibala who had appeared in the suit and filed Vakalatnama as impersonator and at the same time, they have stated that since Nanibala died in the year 1983 so she can not execute any deed in favour of the plaintiffs in the year 1989. Now if the LTI appearing in the Vakalatnama be sent for comparison with the LTI of Nanibala as appearing in the deed, executed in favour of the plaintiffs in the year 1989, no fruitful purpose will be served since according to the plaintiffs, both the LTIs appearing in the Vakalatnama as well as on plaintiff's deed have been allegedly made by imposter Nanibala who allegedly died in 1983 and the result of such scientific investigation will no way help the court to come to a finding as to whether, Nanibala, wife of Murari had executed any deed in favour of the plaintiff or not. Accordingly, he has prayed for rejection of the present application.

I have considered the submissions made by both the parties. On perusal of the judgment passed by the court below on 10th April, 2000 in Title Suit no. 6 of 1993 it appears that the present plaintiffs prayed before the Trial court for comparing the LTI of Nanibala as appearing in the defendants deed dated 20.9.1982 which is marked as Exhibit B with the admitted LTI of Nanibala as appearing in one deed of gift dated 6.9.1973 executed by Nanibala in favour of one Bibhuti Bhusan Bhattacharya in respect of some non-suited property by the Director, Finger Print Bureau S.C.R. West Bengal for comparison and the report discloses that the admitted LTI of Nanibala appearing in the deed of gift dated 6.9.1973 marked Exhibit-10 does not tally with the LTI of Nanibala appearing in the defendant's deed of gift dated 20.9.1982 marked as Exhibit B . Accordingly, court below passed the preliminary decree in favour of plaintiff relying upon such report.

However, during hearing, it appears that the deed dated 6.9.1973 executed by Nanibala in favor of Bibhuti Busan Bhattacharya in respect of the non-suited property is not in dispute but in the present context, the defendants/petitioners have sought for scientific investigation of the LTI of Nanibala allegedly put on the Vakalatnama with that of LTI appearing in the deed executed by Nanibala in favour of the plaintiffs in the year 1989. Accordingly, ultimate finding of the court

below that such comparison of LTI of Nanibala appearing in those two documents, will not yield any fruitful result for the purpose of adjudication of the present suit, since the defendants specific case is that the signature appearing in both documents have been procured by false personification. In view of above, the ultimate finding of the court below does not call for any interference.

C.O. 4230 of 2018 is accordingly dismissed.

However, this order will not preclude the parties to make an appropriate application before the court below for comparison of LTI of Nanibala as appearing in the plaintiff's deed with that of the admitted LTI of Nanibala appearing in the deed of gift dated 6.9.1973 and marked Exhibit-10 and in the event of filing such application by any of the parties, the court below will dispose of such application in accordance with law.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)