

April 30, 2024
Sl. No.26
Court No.19
s.biswas

CO 3981 of 2023

Jaitinder Kaur and another
vs.
Sisir Kumar Kundu and others

Mr. Sudarsan Roy
Mr. Debatyam Gosh
Mr. Romit Bose

... for the petitioners

1. The revisional application arises out of an order dated August 31, 2023, passed by the learned Additional District Judge, 2nd Court, Barrackpore, North 24 Parganas, in Misc. Appeal No.24 of 2022.
2. The learned Additional District Judge affirmed the order dated March 10, 2022 passed by the learned Civil Judge (Junior Division), Bidhannagar, in Title Suit No.32 of 2021.
3. Both the learned courts were of the view that the deed of family settlement would not amount to a partition deed as some portion of the suit property remained unpartitioned. Although, the learned courts took note of the fact that each of the floors had been allotted to each of the brothers, yet the other elements of cessation of the joint ownership of the dwelling house was not available.
4. The petitioners are the stranger purchasers who were sold the second floor by one of the brothers. This is a dwelling house, belonging to a Hindu

family, which was being enjoyed by the three brothers as the heirs of the original owner. Their respective portions were being enjoyed on the basis of the deed of settlement. The suit was filed by the plaintiffs, resisting taking over of possession and enjoyment of the property by the strangers/purchasers.

5. The learned advocate for the petitioners (purchasers) submits that the suit property has been duly mutated in favour of the purchasers. Electricity connection had also been given. It is further submitted that the deed of settlement had categorically provided that the brothers had a right to transfer their share.
6. However, such facts as stated above, would not prevent a person claiming right in terms of Section 44 of the Transfer of Property Act from seeking appropriate injunction against the stranger purchasers. Whether the deed of settlement amounted to cessation of the joint ownership in respect of the dwelling house, etc., will be decided in the suit. Thus, I do not find any reason to interfere with the order impugned. The learned courts have rightly appreciated the facts and arrived at the conclusion that at the interim stage, when the issue of applicability of Section 44 of the Transfer of Property Act,

maintainability of the suit against the strangers purchasers are yet to be decided, the stranger purchasers and effect of the deed of settlement should be prevented from entering into the suit property. Allowing enjoyment of the property by the strangers at the stage of injunction, would amount to deciding the main issue in the suit.

7. The issues have been framed. The learned court will make a sincere endeavour to dispose of the suit within a period of six months.
8. The revisional application stands disposed of accordingly.
9. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)