

OD 2

ORDER SHEET

APO/39/2024
WITH CS/254/2008
SRI ASHOK KUMAR KHARKIA AND ORS .
VS
ANJANA KHARKIA AND ORS.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice PARTHA SARATHI SEN

Date: 4th September, 2024

Appearance:

Mr. Rupak Ghosh, Adv.
Mr. Shankarshan Sarkar, Adv.
Mr. Rajesh Upadhyay, Adv.
...for appellants.

Ms. Manju Agarwal, Adv.
Mr. Sarosij Dasgupta, Adv.
...for respondents.

The Court: This appeal is from a judgment and order dismissing the application of the defendants for revocation of leave under Clause 12 of the Letters Patent.

The subject matter of the suit involves properties situated across many jurisdictions. There is one in brindavan, another a flat numbered 9B in Ballygunge, yet another on Vivekananda Road and the last, a flat numbered 7A, Ballygunge Park Road. The reliefs sought in the plaint are as follows :

a) Declaration that the deed of transfer being no. 9557 dated April 18, 2007 and the two sale deeds both dated 8th January, 2005 and the two deeds of revocation both dated May 24, 2005 the Gift Deed dated August 8, 2008 being no.13869 of 2008 in respect of Flat No.7B at premises No. 9B, Ballygunge Park Road, Kolkata-700 019, and the Sale deeds both dated 8th January, 2005 in respect of 5, Vivekananda Road, Kolkata-700007 and the power of attorney so purported to be executed by the ariginal plaintiffs in favor of the defendants and/or their successors-in-interest are illegal, null, void, of no effect, fraudulent and not binding on the plaintiffs.

b) Delivery up and cancellation of the deed of transfer dated April 18, 2007 and the sale deeds both dated 8th January, 2005 in respect of 5, Vivekananda Road, Kolkata- 700007, and the two deed of revocation both dated May 24, 2005 and the deed of gift dated 8, August, 2007 being no. 13869 of 2007 in respect of Flat No.7B at premises No. 9B, Ballygunge Park Road, Kolkata-700 019, and the power of attorney so that the same may be cancelled upon being adjudged null and void.

c) Perpetual Original injunction restraining the original defendants and each one of them whether by themselves or by their servants or agents or assigns or otherwise howsoever from transferring and/or selling and/or alienating the said properties being Flat Nos.7A and 7B at premises No. 9B, Ballygunge Park Road, Kolkata- 700 019, 5, Vivekananda Road, Kolkata, Sakrail, Howrah property and flat at Vrindavan, U.P. as mentioned in paragraphs 2(a), 2(b), 2(c) and 3 hereof in favor of any third party.

d) Perpetual Original injunction restraining the original defendants and/or their successors-in-interest and each one of them whether by themselves or by their servants or agents or assigns or otherwise howsoever from executing any documents to transfer - the rights of the plaintiffs in the said flat Nos.7A and 7B at premises No.9B, Ballaygunge Park Road, Kolkata-700 019, 5, Vivekananda Road, Kolkata-700 007, Sacrail, Howrah property and the flat at Vrindavan, U.P. as mentioned in paragraphs 2(a), 2(b), 2(c) and 3 hereof to any other third party by relying on and/or using and/or enforcing the purported power of attorney.

e) Perpetual original injunction restraining the original defendants and/or their successors-in-interest and each one of them whether by themselves or by their servants or agents or assigns or otherwise howsoever from giving any effect and/or acting in furtherance to the said deed of transfer dated April 18, 2007, two deeds of sale being nos. 9583 of 2007 and 8818 of 2008 both dated January 8, 2005, the two deed of revocation both dated May 24, 2005 and the deed of gift being no. 13869 of 2007 dated August 8, 2007 in respect of Flat Nos.7A & 7B at premises No. 9B, Ballygunge Park Road, Kolkata-700 019, 5, Vivekananda Road, Kolkata-700 007 and the Sakrail, Howrah property as mentioned in paragraphs 2(a),2(b) and 3 hereof and the purported power of attorney.

f) Injunction.

g) Receiver.

h) Attachment.

i) Costs.

j) Further reliefs.

The nature of the decree sought in respect of each property, in our opinion, clearly suggests that if a decree was actually passed it would certainly affect the right, title and interest in respect of each property. Hence, if the suit was confined to Brindavan property it would clearly be a suit for land, in our opinion, under the principles laid down in *Mooli Jaitha & Co. vs. Khandesh Spg. & Wvg. Mills Co. Ltd.* [AIR 1950 FC 83].

But in this case one of the properties that is involved is situated in Vivekananda Road within the jurisdiction of this court.

One of the arguments that is maintained by Mrs. Manju Agarwal for the respondents is that since the suit covers properties outside jurisdiction and a property within jurisdiction and leave under Clause 12 of the Letters Patent has been granted, the court has the jurisdiction to entertain, try and determine the suit.

The above argument of Ms. Agarwal was met by Mr. Rupak Ghosh, learned advocate for the appellants by contending that only in a partition and administration suit the court could entertain a suit in respect of properties some of which are outside the jurisdiction and some within but in this kind of a case it could not. Each property had to be within jurisdiction.

We have heard extensive arguments from both learned counsel.

What is material at this point of time is, this suit is of 2008 and pending in this court close to 20 years. Secondly, substantial steps have been taken in the suit. During its pendency terms of settlement was entered into by the parties and has received the imprimatur of the court. Reference may be made to the order dated 28th April, 2014 by Mr. Justice Soumen Sen. As a result, the Brindavan property and flat

no.7B, Ballygunge are outside the domain of the suit. What remains is the Vivekananda Road and Ballygunge Park properties.

We are told that witness action has started.

Considering all the facts and circumstances, there is no point in hearing an appeal on the question whether Clause 12 leave should be revoked. It would further delay the suit. We direct that the learned trial judge should frame a specific issue, if not already framed, whether the suit now subsisting involving the Vivekananda Road and Ballygunge Park properties, one property within the jurisdiction and the other outside jurisdiction can be entertained and determined by this court ? We record the submission of Ms. Agarwal for the respondents that her client will not insist on any relief with regard to the Howrah property. The above issue may be tried as a jurisdictional issue. All questions are open before the learned single judge. Upon determination of the jurisdictional issue, it is up to the learned judge to decide whether to proceed further with the suit or to pass any other judgment and order.

We make it clear that since witness action has started it will be concluded before the jurisdictional issue is decided.

We request the learned judge to dispose of the suit as early as possible, subject to the convenience of the bench.

The appeal is accordingly disposed of.

(I. P. MUKERJI, J.)

(PARTHA SARATHI SEN, J.)