

03 17.01.2025

Ct-37

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FMA 935 of 2024

with

IA No. CAN 1 of 2024

Sadani Watch Co. Pvt. Ltd.

Vs.

Roshni Begum & Ors.

Mr. Rudraman Bhattacharyya

Mr. Subashish Sengupta

Mr. Akash Munshi

Mr. Lalit Baid

Ms. Sanjana Shaw

... For the Appellant

Mr. Amales Ray, Sr. Adv

Mr. Subhrokanti Roy

Ms. Mousumi Bhowal

Mr. Ishan Bhattacharya

... For the Respondent nos. 2 to 6

1. We have heard the learned counsel appearing for the parties.

2. The dispute is with regard to the title to the property between the parties. Earlier we have heard the learned counsel for the parties and passed an order whereby the parties were directed to maintain status quo as on the date of the said order i.e. 3rd January, 2025 with regard to the nature, character and possession of the property in question till the returnable date of this matter on 9th January, 2025. The interim order was extended till this date.

3. The basis for refusal of interim order, amongst others, appears to be the existence of a prior deed of conveyance alleged to have been executed in the year 1936 wherein the property in question has

been transferred to Sk. Alif Nabi Mistry. It further appears that the learned Trial Court has recorded that although the said deed of conveyance was disclosed but the plaintiff had denied the title of the vendor/donor of the said deed.

4. On query, learned advocate for the plaintiff before the learned Trial Court had denied the existence of any deed. We do not find any existence or reference of such deed of conveyance alleged to have been executed in the year 1936 by Mosleuddin in favour of a third party and that we could find out from the stay petition is a deed of sale dated 9th December, 1998 between Halima Bibi and Sk. Alimuuddin as vendors in favour of the present plaintiff in which it was recorded in the recital that Mosleuddin Ahmed died intestate in the year 1936.

5. Mr. Amalesh Ray, learned senior counsel appearing for the respondent nos. 2 to 6, has submitted that the legal heirs of Mosleuddin had executed a deed of gift in favour of the respondents and on the basis of such deed, the names of the respondents have been duly mutated in the Corporation and also in the land records by deletion of the names of the earlier owners of the property, namely, the legal heirs of Basiruddin,

who happens to be the son of Mosleuddin.

6. It is further submitted that the plaintiff has no right, title over the property and inspection of the C.S records reveals that the name of Basiruddin, the son of Mosleuddin, was recorded as owner of the property and had paid all the land revenues. However, We feel that this fact is required to be brought on record, since it is elementary that a person, who is not competent to transfer the property on the date of transfer, cannot confer any right on a transferee. The plaintiff has disclosed seven deeds, as a prima facie evidence, over the title of the property.

7. On such consideration, we dispose of the appeal by directing the parties to maintain status quo with regard to the nature, character and possession of the property in question till the disposal of the injunction application.

8. A copy of the plaint, injunction application together with the writ of summons shall be served upon the learned advocate on record of the respondents on or before 21st January, 2025. In default, this order shall stand vacated without any further reference to this court.

9. After being served, the respondents shall file

their written objection on or before 28th January, 2025. Reply, if any thereto, be filed on or before 6th February, 2025.

10. We request the learned Trial Court to fix the matter any date thereafter, subject to the convenience of the Court and make all endeavour to dispose of the matter on merits without being influenced by the observations made in this order.

11. As no affidavit is called for, all allegations made in the petition are denied.

12. In view of the above, the appeal being FMA 935 of 2024 stands disposed of along with CAN 1 of 2024.

13. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)

