

Sl.39
10.09.2025
Court No.6
BP

C.O. 3282 of 2025

Smt. Bhagirathi Ghosh @ Bharati Ghosh
-versus-
Smt. Saraswati Ghosh & Anr.

Ms. Sohini Chakraborty
Mr. Pradyot Kumar Nandi
Ms. Subhra De
... for the petitioner

Ms. Chakraborty, learned advocate appearing for the petitioner files the certified copy of the order being no. 38 dated 13th December, 2013 passed by the learned Civil Judge (Senior Division), 1st Court, Hooghly in Title Suit No. 9 of 2010 which is taken on record. Let the said certified copy be tagged along with the records of this case.

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against the judgement and order dated 3rd April, 2025 passed by the learned Additional District Judge, 3rd Court, Chinsurah, Hooghly in Misc appeal No. 20 of 2014.

By the judgement and order impugned the miscellaneous appeal was allowed in part thereby modifying the later part of the order being no.38 dated December 13, 2013 passed by the learned trial judge and directing both the parties to maintain status quo.

Ms. Chakraborty, learned advocate appearing for the petitioner submits that the mother of the petitioner and the opposite party no.1 was the original owner of the suit properties. She submits that upon the death of the mother the property devolved upon the petitioner and the opposite party no.1 in equal shares. Since there was a dispute with regard to joint possession of the parties in respect of the suit plots, the petitioner filed a suit for partition and the learned trial judge, upon a contested hearing, passed an order of status quo. The learned judge of the appellate court, however, modified the order of status quo excluding the properties which were mentioned in Schedule A and B of the counter-claim. Ms. Chakraborty submits that the opposite parties claimed to have acquired exclusive right over Schedule A and B property of the counter-claim by virtue of registered deed of sale and gift allegedly executed by the mother of the petitioner and the opposite party no.1 in favour of the opposite parties herein. She submits that the said deeds of transfer are fraudulent and therefore are void and for such reason, the petitioner has filed a suit challenging the said deeds. She submits that since the deeds of transfer are under challenge, the parties should be directed to maintain status quo in respect of the suit properties as mentioned in the schedule of the plaint in order to prevent multiplicity of proceedings.

The petitioner herein filed a suit for partition and for other consequential reliefs in respect of plots of land total numbering about forty. The petitioner filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for temporary injunction restraining the defendants/opposite parties herein from creating any disturbance in the peaceful possession of the plaintiff/petitioner herein and also from changing the nature and character of the suit property and/or from transferring and alienating the same to the third parties. The application for temporary injunction was contested by the defendants/opposite parties herein by filing a written objection thereto. The opposite parties herein are also contesting the suit by filing a written statement. In the said written statement the opposite parties have set up a counter-claim praying for declaration that the defendant/opposite party no.1 is the absolute owner in respect of A Schedule property to the counter-claim and the defendant/opposite party no.2 is the absolute owner of B Schedule to the counter-claim and for permanent injunction restraining the plaintiff/petitioner herein from disturbing the peaceful possession of the opposite parties in respect of Schedule A and B property to the counter-claim. The learned trial judge upon a contested hearing passed an order of status quo in respect of nature, character, possession and alienation over the suit property. The learned trial judge after taking note of the

case made out by the defendants/opposite parties in the written objection that the suit property is not a joint property and are the personal properties of the opposite parties by virtue of transfers effected by the original owner during her life time passed an order of injunction on the ground that as the suit is filed the parties share and rights are required to be protected.

The opposite parties preferred a Miscellaneous Appeal being no. 20 of 2014 challenging the later part of the order being no.38 dated 13th December, 2012 passed by the learned trial judge. The learned Additional District Judge, 3rd Court at Chinsurah, by the judgement and order impugned allowed the miscellaneous appeal in part thereby modifying the later part of the order dated 13th December, 2013.

It is not in dispute that the mother of the petitioner and the opposite party no.1 was the original owner of the plots mentioned in the schedule of the plaint. It appears from the records that the mother of the petitioner and the opposite party no.1 namely, Pushpa Bala Dasi sold some of her properties in favour of the opposite party no.2 who is the son of the opposite party no.1 by a deed being no.396 of 2002. Record further reveals that the said Pushpa Bala Dasi transferred some plots by a registered deed being no. 870 of 2002 in favour of the opposite party no.1. It is not in dispute that the mother of the petitioner and the opposite party no.1 died on 2nd June, 2009.

Puspa Bala Dasi did not challenge the said deeds during her lifetime.

The instant suit for partition was filed in the year 2010. When an original owner of the property transfers her right, title and interest in respect of immovable property during her life time by executing registered deeds the question of inheritance by the legal heirs in respect of such properties does not arise. It is well settled that registered instrument carries with it a presumption of valid execution and registration. Merely because the petitioner has challenged the said deeds by filing a separate suit, it does not ipso facto render such registered instruments invalid in the eye of law.

An owner of a property cannot be restrained from utilising his property according to his desire.

From the materials on record it is evident that the original owner of the suit property transferred some of her properties as specifically mentioned in Schedule A and B to the counter-claim by executing registered instrument in favour of the opposite party no.1 and 2. This Court is, therefore, of the considered view that the plaintiff/petitioner failed to make out a strong prima facie case to go for trial insofar as the properties mentioned in Schedule A and B to the counter-claim is concerned.

The learned trial judge without considering the effect of execution of registered instruments by an original owner of this property during her life time passed a

blanket order of injunction only with an observation that when the suit has been filed the share and right of the parties are required to be protected. Such an approach is not tenable in law. The learned judge of the appellate court assigned cogent reasons for modifying the order of status quo passed by the learned trial judge.

The learned judge of the appellate court directed both the parties to maintain status quo in respect of nature, character, possession and alienation over the properties that are mentioned in the schedule of the plaint excluding once mentioned in the Schedule A and B of the written statement and counter-claim till the disposal of the suit. The order passed by the learned judge of the appellate court is a well reasoned order considering the cases of the respective parties and the effect of registered instruments executed by the original owner during her life time insofar as the devolution of interest in the said property is concerned.

In view of the aforesaid discussion, this Court is not inclined to interfere with the order passed by the learned judge of the appellate court.

It is, however, made clear that the observations made hereinbefore are only for the purpose of supporting the ultimate conclusions of the learned judge of the appellate Court.

Accordingly, C.O. 3282 of 2025 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)