Form No. J.(2)
Item No.4

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL REVISONAL JURISDICTION
APPELLATE SIDE

HEARD ON: 13.02.2025
DELIVERED ON: 13.02.2025

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

C.O. 3413 of 2024

Sri Barid Baran Roy
Vs.
Gopal Banerjee & Ors.

Appearance:-
Mr. Gopal Chandra Ghosh
Mr. R. K. Mondal
Ms. Sunandana Saha

......For the Petitioner

Mr. Pranit Bag
Mr. Rahul Poddar
Mr. Debdutta Saha
Ms. Amani Kayam
Mr. Saptak Sanyal

.........For the Opposite Party No.13

Mr. Debasish Roy, Sr. Adv.
Mr. Partha Pratim Roy
Mr. Anindya Bose
Ms. Cardina Roy

.....For the Opposite Party no.14

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated August 17, 2024 passed by the learned Civil Judge (Senior Division), 5th Court, Alipore in Title Suit No.181 of 2012.

2. By the order impugned, the application of the petitioner dated January 10, 2023 and the application filed by the defendant no.14/opposite party no.14 dated March 15, 2022 were disposed of. In the petition dated March 15,

2022, the opposite party no.14 prayed for a direction upon the petitioner herein to deposit the stamp duty assessed by the Collector and for proceeding with the suit in accordance with law.

3. The petitioner filed the application dated January 10, 2023 under Section 151 of the Code of Civil Procedure praying for a direction upon the authority to reassess the stamp duty on the instrument being agreement dated October 17, 2004, which was impounded by the learned Trial Judge.

4. Petitioner filed a suit for specific performance of contract and for other consquential reliefs.

5. During the evidence of the P.W.1, the agreement dated October 17, 2004 was tendered and in view of the objection raised by the contesting defendants with regard to the admissibility of the said instrument for want of proper stamp duty, the agreement dated October 17, 2004 was impounded and the same was sent to the Collector for assessment of the proper stamp duty.

6. Pursuant thereto, the Collector assessed the stamp duty and a report dated September 7, 2018 was forwarded to the learned Trial Judge. As per the said report, the valuation of the property, which was the subject-matter of the said instrument was assessed at Rs.5,39,70,865/- as per the Government Rules and a stamp duty of Rs.31,35,111/- was directed to be paid by the purchaser of the agreement for sale as per the order passed by the Collector, 24 Parganas (South).

7. After perusing the report dated September 7, 2018, the learned Trial Judge by an order dated January 22, 2019 directed the plaintiff/petitioner herein to deposit the stamp duty assessed by the Collector, which was specifically indicated in the said report.

8. Being aggrieved by the order dated January 22, 2019, the petitioner approached this Court by filing C.O. No.2047 of 2019, which was dismissed by the Co-ordinate Bench by order dated August 11, 2021. The petitioner herein approached the Hon'ble Supreme Court by filing a Special Leave Petition (Civil) No(s).17328/2022, which was dismissed by the Hon'ble Supreme Court by the order dated October 10, 2022. It is not in dispute that a revisional application was filed to review the order dated October 10, 2022 and the same was dismissed by order dated December 8, 2022.

9. Thereafter, the petitioner filed the instant application under Section 151 of the Code of Civil Procedure praying for reassessment of the stamp duty payable by the petitioner. Such application was dismissed by the learned Trial Judge, which is under challenge in this civil revisional application.

10. Mr. Ghosh, learned senior advocate appearing for the petitioner submits that the order dated January 22, 2019 passed by the learned Trial Judge was challenged in the earlier round of litigation on the ground that the valuation of the entire property, which was the subject-matter of the agreement was taken into consideration, whereas the subject-matter of the dispute involved in the suit relates only to a portion thereof. He submits that the Co-ordinate Bench in the earlier round of litigation only had the occasion to decide such aspect of the matter and nothing else.

11. He further submits that pursuant to an information furnished under the provisions of the Right to Information Act, 2005 (hereinafter referred to as "the 2005 Act"), the petitioner came to know that the stamp duty was assessed on the basis of the market value of the property as on the current date when the statute prescribes that such market value has to be ascertained as on the date

of execution of the instrument, which is the agreement dated October 17, 2004.

12. Mr. Ghosh, learned advocate submits that the learned Trial Judge instead of appreciating the issue raised by the petitioner in the application under Section 151 of the Code of Civil Procedure, mechanically dismissed the same on the ground that such issue has already attained its finality in view of the fact that in the earlier round of litigation, the matter reached up to the Hon'ble Supreme Court. In support of his submission that the decisions rendered in the earlier round of litigation cannot be said to be *res judicata,* Mr. Ghosh, learned advocate places reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Satyadhan Ghosal & Ors. Vs. Smt. Deorajin Debi & Anr.*** reported at ***AIR 1960 SC 941*** and in the case of ***Arjun Singh Vs. Mohindra Kumar*** reported at ***AIR 1964 SC 993.***

13. Mr. Roy, learned senior advocate appearing for the opposite party no.14 took this Court though the orders passed by the Co-ordinate Bench in the earlier round of litigation as well as the orders passed by the Hon'ble Supreme Court in the Special Leave to Appeal and the review petition. He submits that since the issue with regard to the assessment made by the Collector as to the stamp duty payable on the agreement dated October 17, 2004 has already reached its finality, the same cannot be reopened at the subsequent stages of the same proceeding.

14. He reiterates the well-settled proposition of law that the principle of *res judicata* shall apply even at the subsequent stages of the same proceeding.

15. He further submits that the information furnished under the 2005 Act was available with the petitioner prior to the dismissal of the review application.

16. Mr. Bag, learned advocate appearing for the opposite party no. 13, assisted by Mr. Debudutta Sharma submits that the assessment made by the Collector, which was appearing in the report dated September 7, 2018 was accepted by the learned Trial Judge and such order was affirmed upto the Hon'ble Supreme Court and, therefore, the same cannot be reopened at the instance of the petitioner in the garb of an application under Section 151 of the Code of Civil Procedure.

17. Heard the learned advocates for the respective parties and perused the materials placed.

18. It is not in dispute that upon the agreement for sale dated October 17, 2004 being impounded by the learned Trial Judge, the Collector assessed the valuation of the property involved in the said agreement and the stamp duty, which was required to be paid by the purchaser of the agreement for sale was also indicated in the said report. The report of the Collector was accepted by the learned Trial Judge by order dated January 22, 2019.

19. The petitioner approached this Hon'ble Court by filing C.O. 2047 of 2019 challenging the order of the learned Trial Judge accepting the assessment made by the Collector.

20. Though it appears from the order dated August 11, 2021 passed in C.O. 2047 of 2019 that one of the grievances of the petitioner was that the valuation was made on the entire property, which was the subject-matter of the agreement but the fact remains that the assessment made by the Collector in respect of the property, which was the subject-matter of the agreement for sale was challenged before the Co-ordinate Bench in C.O. 2047 of 2019.

21. In the earlier round of litigation, the petitioner, while challenging the assessment made by the Collector, thought it fit to raise only the grievance as

to the extent of the property on which the stamp duty was assessed but the fact remains that it was incumbent upon a party challenging an assessment to attack such assessment on all grounds in the said proceeding. Even though the petitioner may not have specifically raised the issue as to the determination of the market value as on the date of execution of the instrument but the same ought to have been raised as a ground of attack against the assessment made by the Collector.

22. The Co-ordinate Bench in the order dated October 11, 2021 specifically observed that in the event the petitioner has any grievance against the assessment of the Collector, ample recourse is available to the petitioner for seeking refund of the amount under sections 44 and 45 of 1899 Act itself. The coordinate Bench, after noting the provisions of section 47A of the 1899 Act observed that section 47A (1) contemplates a situation, where the registering officer under the Registration Act, 1908, while registering an instrument including an agreement, has reason to believe that the market value of the property has not been duly set forth in the instrument, such officer shall take appropriate steps within the purview of the said section for assessment of the market value. After noting the said provision, the learned Trial Judge observed that such a situation has not arisen in the case on hand since the Collector assessed the market value on the request of the learned Civil Judge and there was no option left before the Court itself but to accept such assessment as it is within the contemplation of Sections 33 and 35 of the 1899 Act.

23. Therefore, the Co-ordinate Bench returned a finding that the assessment of the market value made by the Collector could not be interfered with by the Court as the assessment was made at the request of the Court.

24. The petitioner has tried to challenge the assessment made by the Collector by raising a different ground. As observed by this Court hereinbefore that the petitioner ought to have raised such a ground while attacking the assessment made by the Collector in the earlier round of litigation.

25. Mr. Roy, learned senior advocate appearing for the opposite party no.14 is right in submitting that the information supplied by the concerned authority under the 2005 Act was within the knowledge of the petitioner prior to the disposal of the review application by the Hon'ble Supreme Court.

26. The learned Trial Judge, in the considered view of the Court, was right in holding that the petitioner is attempting to review an order passed by it, which has not been interfered with up to the Hon'ble Supreme Court and therefore, it was not open to the learned Trial Judge to reopen such issue.

27. This Court does not find any infirmity in the findings recorded by the learned Trial Judge while disposing of the application under Section 151 of the Code of Civil Procedure filed by the petitioner herein on January 10, 2023.

28. At this stage, it would be relevant to point out that the Co-ordinate Bench in the order dated August 11, 2021 has also noted that there is ample recourse available to the petitioner for seeking refund of the amount under Sections 44 and 45 of the 1899 Act.

29. Mr. Ghosh, learned Senior advocate would contend that the petitioner came to know the fact that the assessment was made by the Collector on the basis of the current market value only after disposal of the Special Leave Petition by the Hon'ble Supreme Court. The fact that the petitioner came to learn of the error in the assessment on the ground that the market value as on the date of execution of the agreement was not taken into consideration cannot be a ground to reopen the assessment, which was ultimately accepted up to the Hon'ble Supreme Court.

30. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in ***Satyadhan Ghosal (supra)*** that the principles of *res judicata* is based on the need of giving a finality to the judicial decisions and the principles of *res judicata* applies as between past litigation and future litigation and also between two stages in the same litigation to the extent that a Court whether the Trial Court or a higher court having at an earlier stage decided the matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding.

31. In the case on hand, the petitioner assailed the assessment made by the Collector in the earlier round of litigation. Petitioner unsuccessfully challenged the same upto the Hon'ble Supreme Court and, therefore, the assessment made by the Collector in respect of the property, which was the subject-matter of the agreement attained finality. In view thereof, this Court is of the considered view that the decision of the Hon'ble Supreme Court in the case of ***Satyadhan Ghosal (supra)*** cannot come to the aid of the petitioner in the case on hand but, the same supports the case of the opposite parties.

32. In ***Arjun Singh (supra)***, the Hon'ble Supreme Court observed that there are certain categories of interlocutory orders viz. orders of stay, injunction on receiver, which did not decide the merits of the controversy and such orders are capable of being allured or varied. It was held that if the rule of *res judicata* is applicable to a decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue.

33. The said decision also supports the opposite party and not the petitioner as the assessment of stamp duty being an issue of fact once decided, a fresh investigation even or new facts cannot be permitted.

34. In view thereof, this Court is not inclined to interfere with the order impugned. Accordingly, the revisional application stands dismissed without, however, any order as to costs.

35. The learned Trial Judge is requested to dispose of the Title Suit in the light of the directions passed by a Co-ordinate Bench on an earlier occasion.

36. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)