

Item No.25
01.09.2025
Court. No. 1
GB

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI*

CO 137 of 2025

Sri Ram Chandra Agarwal
@ Ram Chander Agarwal & Ors.
VS
Smt. Subhra @ Suvra Chowdhury & Ors.

*Mr. Suresh Kumar Mitruka,
Mr. Aayush Mitruka,
Ms. Shruti Yadav,
Mr. Sujit Swami*

...for the Petitioner.

*Mr. Dipankar Sen,
Ms. Dilruba Yasmin*

...for the Opposite Party Nos.5 & 6.

1. Affidavit-of-service as filed today, is taken on record.
2. Despite service, none appears on behalf of the opposite party nos.1 to 4.
3. The issue involved is with regard to deletion of the names of the opposite party nos.5 and 6. The opposite party nos.5 and 6 are the contesting parties in this revisional application. Opposite party nos.5 and 6 are represented by their learned advocate.
4. The petitioners as plaintiffs filed a suit for specific performance of contract and for permanent injunction.
5. The prayers in the suit are set out below:-

“a) For declaration that the agreements
dated: 26.10.2008 executed by and between the

plaintiffs and the defendant Nos. 01 to 04 are still existing and acted upon and in force

b) For declaration that the defendant Nos. 01 to 04 are bound to remove the defects by clearing the demand and claims of the local people over the suit properties/scheduled landed properties by their intervention into the matter;

c) For declaration that the defendants are bound to reproduce the agreement dated: 26.10.2008 on the stamp paper of requisite value and to register the same as per law;

d) For declaration that the defendant Nos. 01 to 04 had/have no right to enter into in any other agreement or contract in respect of the scheduled properties hereto by ignoring, avoiding and neglecting the said agreement dated 26.10.2008 with any other person or persons until to cancel the same with due process of law:

e) For declaration that the Deed of Conveyances as executed by the defendant Nos. 01 to 04 favouring the defendant Nos. 05 and 06 Vide Deed Nos. 1/160, 1/161, 1/485 and 1/486 of 2011 and registered at the office of the ADSR. Rajganj, in respect of the suit properties are illegal, void, inoperative and not binding upon the plaintiffs and that the defendant Nos. 05 and 06 had/have not acquired any right, title or interest over the suit

properties on the strength of the aforesaid Deeds of Conveyances;

f) For Specific Performance of the Contract dated: 26.10.2008 favouring the plaintiffs, directing the defendant Nos. 01 to 04 to remove the defects of the landed properties/clear the demand and claims of the local people and also to execute and register the necessary sale deed in favour of the plaintiffs, after receiving the balance amount of consideration money /balance price of the suit land and complying the required formalities including for delivery of possession of the suit properties to the plaintiffs, within certain time to be fixed by this Ld. Court: AND if, the said defendants fails or neglects to execute and register the necessary Sale Deed in favour of the plaintiffs and to deliver the possession of the suit properties, then all these required acts and deeds may kindly be done by the Ld. Court through its Agents:

g) For an injunction restraining the defendants and/or their man or associates from changing the nature and character of the suit properties and/or from transferring the said landed properties to any other persons or from creating any third party interest over the suit properties;

h) Temporary injunction in terms of prayers made in clause No. (g) above till disposal of the suit: And an Ad-interim injunction in terms of prayer as made in clause (g), till the disposal of the injunction application:

i) For appointment of Receiver:

j) For Appointment of Commissioner:

k) For Payment of Costs: and

l) any other or further reliefs to which the plaintiffs are found entitled. And for this act of kindness, the plaintiffs as in duty bound, shall ever pray.

6. The plaint case was that the plaintiff nos.1 to 4 were relatives and plaintiff no.5 was a trust. The opposite party nos.1 to 4 and the plaintiffs entered into a contract for purchase of certain plots of land dated October 26, 2008 and part consideration money was paid by the plaintiffs/petitioners. Sometime in December 2010, the petitioners came to know that the opposite party nos.1 to 4 had negated the contract and sold the properties to some other persons. Newspaper publications were made by the petitioners to make it known to the proposed purchasers that an agreement subsisted between the petitioners and the opposite party nos.1 to 4. A notice was issued by registered post calling upon the opposite party nos.1 to 4 to take steps for execution

of the deed upon acceptance of remaining consideration money. Upon search of the records in the office of the Additional District Sub-Registrar, Rajganj, the petitioners came to know that the defendant/opposite party nos.1 to 4 had transferred the property to the defendant/opposite party nos.5 and 6. As such, the suit was instituted with the reliefs as quoted hereinabove.

7. The petitioners filed an application for amendment of the plaint to add the subsequent transferees and also to bring on record the factum of such transfer. The opposite party nos.5 and 6 filed an application under Order I Rule 10(2) of the Code of Civil Procedure for striking out their names.
8. Upon hearing the rival contentions of the parties, the application for amendment of the plaint was allowed and the application for deletion and/or expunging the names of the opposite party nos.5 and 6 was also allowed by a common order. The said order of deletion has been impugned before the court dated May 13, 2025.
9. Learned advocate for the opposite party nos.5 and 6 submits that the opposite parties already sold the property to others sometime in 2018 and they do not want to contest the suit. Although the suit was filed in 2011, the summons were received in 2022, when the lands were already sold.

10. In my view, the carriage of proceedings is in the hands of the plaintiffs. The plaintiffs have prayed for cancellation of the sale in favour of the opposite party nos.5 and 6. Deletion of the names of the opposite party nos.5 and 6 may amount to negation of the one of the prayers.
11. At this stage, it cannot be ruled out that the opposite party nos.5 and 6 may be a necessary party to the proceedings, if not a proper party.
12. Under such circumstances, the order impugned is modified to the extent that the opposite party nos.5 and 6 shall continue to remain as defendant nos.5 and 6. The contention of the learned advocate for the opposite party nos.5 and 6 that the sale was during the pendency of the suit and such sale will be hit by the doctrine of lis pendens, is not correct. The suit was filed with a specific prayer for cancellation of the deed executed in favour of the opposite party nos. 5 and 6 by the opposite party nos.1 to 4.
13. Under such circumstances, the order impugned is modified to the above extent and the part of the order by which the application under Order I Rule 10(2) of the Code of Civil Procedure was allowed, is set aside.
14. The amended plaint will be filed within a period of two weeks from date. The opposite party nos.5 and 6 as also the other opposite parties are at liberty to file

their additional written statement within a period of three weeks from receipt of the amended plaint.

15. It is entirely up to the opposite party nos.5 and 6 whether they want to contest the proceeding or not.
16. The learned judge is requested to make an attempt to hear the suit expeditiously.
17. Accordingly, the revisional application being C.O.137 of 2025 is disposed of.
18. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)