

22.05.2025
Court No.1
Item No.4
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

FMAT 15 of 2024

**Remi Majumder
Vs.
Shyamal Kanti Bose**

Mr. Bapi Sarkar

... For the Appellant.

Mr. Sudipto Kumar Mazumdar, Senior Advocate
Mr. Shubhankar Dutta
Mr. Sudip Kumar Paul

... For the Respondent.

1. The appeal is directed against an interim order under Order 39 Rule 1 and 2 of the C.P.C. dated 17th August, 2024 passed by the learned Civil Judge (Senior Division) at Alipurduar. The appellant/defendant is aggrieved by the same and submits that the interim order could not have been passed in view of the suppression of material facts by the respondent/plaintiff.

2. The brief facts relevant to the case are that the appellant/defendant is the recorded owner of 7.2 acres of land situated and lying at Kumargram, Alipurduar district. She is a widow. She was approached by her friend one Smt. Malabika Bose

that the later's husband would assist her in disposing of the property and ensure that she makes out a good living out of the sale proceeds.

3. The appellant claims to have trusted her friend and her friend's husband being plaintiff/respondent and had signed certain documents, which are blank, purport whereof she did not understand.

4. The said documents signed on 24th March, 2021, was actually an agreement of sale of the said 7.2 acres of land at Alipurduar for a total consideration of rupees two lacs. The plaintiff/respondent claimed to have paid a sum of rupees fifty thousand in advance to the appellant/defendant. The appellant states that thereafter the respondent/plaintiff, required the appellant to execute a Power of Attorney dated 31st March, 2021 that was registered with the A.D.S.R., Siliguri on 1st April, 2021. In terms of the said Power of Attorney, the appellant/defendant constituted the respondent/plaintiff as her lawful attorney to, inter alia, sell the suit property and make over the sale proceeds to her.

5. The A.D.S.R., Siliguri at the time of registration of Power of Attorney indicated that the value of the

property was in excess of rupees one crore and 11 lacs.

6. The appellant later came to know that the respondent/plaintiff was trying to sell and dispose of the property and had entered into alleged agreement with Mahuya Karmakar and Ranjana Roy to sale the property for a sum of Rs.41 lacs. A sum of rupees ten lacs was also received by the plaintiff in that regard.

7. The said agreement was allegedly entered into prior to execution of the Power of Attorney. The appellant thereafter realizing that the respondent/plaintiff has tried to defraud her, revoked the said Power of Attorney dated 31st March, 2021 by a registered deed of revocation dated 24th June, 2021.

8. The appellant/defendant also registered a complaint with the Siliguri Police Station that was registered as FIR No.731 of 2021 against the respondent/plaintiff. The said respondent/plaintiff was arrested on 20th May, 2022 and charge sheet has been filed.

9. Surprisingly most of the aforesaid facts including the registration of Power of Attorney and FIR were suppressed by the respondent/plaintiff in the plaint in a suit for specific performance of the said

purported agreement for sale dated 24th March, 2021 that was numbered as OC 5 of 2021 which was filed on 12th July, 2021.

10. The respondent/plaintiff filed an application under Order 39 Rule 1 and 2 of the C.P.C. and initially obtained an order of interim injunction that was confirmed by the impugned order dated 17th August, 2024, whereby the Court directed the parties to maintain status quo in respect of the nature, character, ownership and possession of the suit property and not to create any third party interest thereon till the disposal of the suit.

11. The appellant is aggrieved by the same.

12. Having heard the learned counsel for the appellant/ defendant and Mr. Sudipto Kumar Mazumdar, learned senior counsel for the respondent/ plaintiff and having carefully considered the pleadings in the plaint and the application under Order 39 Rule 1 and 2 of the C.P.C., this Court notes that the execution and revocation of the Power of Attorney by the appellant/defendant has been suppressed by the plaintiff from the Court below.

13. If indeed the agreement of sale was validly executed by and between the parties, the subsequent

execution of the Power of Attorney appears to be in direct contradiction of the purported agreement of sale dated 24th March, 2021.

14. This Court also notices that the property is admittedly valued above Rs.1 crore 11 lacs as on the year 2021. The same is evident from the report of the A.D.S.R., Siliguri at the time of registration of the Power of Attorney in question. It is, therefore, not possible for this Court to believe that the appellant/defendant knew or could have known or could have agreed to sell the property in question to the respondent/plaintiff for a paltry sum of rupees two lacs. The said fact has also not come to the notice of the Trial Court.

15. The Trial Court also did not verify as to whether the respondent/plaintiff at all paid any consideration towards the said purported agreement of sale. No documents or bank statements appear to have been produced by the respondent/plaintiff in the Court below.

16. It is now well settled that any document evidencing or indicating transfer of property of more than rupees one hundred is required to be mandatorily registered. The said purported agreement

of sale has not been registered. The Trial Court could not have placed reliance on the said document or entertained the same without the procedure of impounding under Sections 30 to 33 of the Registration Act.

17. Learned senior counsel for respondent submits that there are exceptions to mandatory registration clauses under the Registration Act and hence the agreement of sale could have been considered by the Court below.

18. Having regard to the fact that the respondent/plaintiff has suppressed several material facts, this Court is of the unequivocal view that interim order of injunction passed by the Court below dated 17th August, 2024 could not have been passed.

19. The respondent/plaintiff has not approached the Trial Court in clean hands. No discretionary relief under Order 39 Rule 1 and 2 could have been passed by the Court below in the backdrop of the above facts recorded hereinabove.

20. In view of the above, the impugned order dated 17th August, 2024 shall stand vacated forthwith.

21. Accordingly, the appeal is allowed and disposed of. In view of the disposal of the appeal, all connected pending applications, if any, are also disposed of.

22. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)