

(2010) 07 CAL CK 0010

Calcutta High Court

Case No: C.O. No. 2844 of 2006

Pintu Santra

APPELLANT

Vs

Sambhunath Samanta

RESPONDENT

Date of Decision: July 26, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (2011) 3 CHN 769

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Abhishek Banerjee, for the Appellant; J.R. Chatterjee and Sarmistha Ghosh Sharma, for the Respondent

Judgement

Kanchan Chakraborty, J.

The revision application under Article 227 of the Constitution of India is directed against the order dated 4.4.2006 passed by the Sri Rana Dam, the learned Civil Judge, Junior Division, 2nd Court, Chandernagore in Title Suit No. 42 of 2005 whereby the learned Trial Judge directed the plaintiff to put in necessary Court-fees on the value of a deed of sale by 11.5.2006 and kept the preemptory hearing of the suit in abeyance.

2. The propriety of such order is under challenge in this application at the instance of the plaintiff/petitioner herein. The petitioner/plaintiff Pintu Santra and three others instituted the suit referred to above against the present opposite parties Sambhunath Samanta and eight others praying for the following reliefs;

a) a declaration to the effect that the suit property described in the scheduled appended to the plaint is joint and undivided property of the plaintiff and defendant Nos. 4 to 9;

- b) a declaration to the effect that the sale deed by defendant Nos. 4 to 9 in favour of defendant Nos. 1 to 3 on 29.8.2002 in respect of some portion of the disputed property is ineffective and not acted upon;
- c) a declaration to the effect that the plaintiffs have 1/7th share each in the suit property;
- d) a permanent injunction against the defendants restraining them from disturbing the possession of the plaintiff in the suit property and other reliefs.

3. The case of the plaintiff in the Trial Court is that the property in dispute was originally belonging to their predecessor in interest Arabindo Jana. On his death, the property was devolved upon the defendant the plaintiff Nos. 1 to 4 and defendant Nos. 4 to 9 had been possessing the property jointly without effecting any petition by metes and bound. Sometime in the year 2005, the defendant Nos. 1 to 3 obstructed the plaintiffs to enter into the suit property and caused disturbance in their possession over the suit property on the ground that they purchased the shares of the defendant Nos. 4 to 9 by registered deed on 29.8.2002. The defendant Nos. 1 to 3 did not agree to the proposal of the plaintiffs to get property partitioned mutually and denied the joint right, title and interest of the plaintiff in the suit property. So, the plaintiffs filed the suit praying for the reliefs mentioned earlier.

4. The defendant Nos. 1 to 3 entered appearance in the suit and ultimately the suit reached at preemptory hearing stage. Suddenly on 4.4.2006 the learned Trial Court on scrutiny of the case record detected that amongst the reliefs prayed for, a relief in form of declaration that the deed of sale being No. 3911 dated 29.8.2002 was void ab initio, was sought for. He, came to a conclusion that because of that relief, the plaintiffs were supposed to pay requisite Court-fees on the value of the impugned deed of sale. He directed the plaintiff to pay the Court-fees by 11.5.2006 and kept the preemptory hearing of the suit in abeyance till that date.

5. Being dissatisfied with the said order, this revision application has been filed by the present petitioner Pintu Santra alone challenging the legality, validity and propriety of the order.

6. The short point to be considered in this revision is whether the learned Trial Judge was justified in passing impugned order directing the plaintiff to pay Court-fees on the valuation of the deed of sale dated 29.8.2002.

7. Mr. Abhishek Banerjee, learned Advocate appearing on behalf of the petitioner contended that the principal relief sought for by the plaintiff is declaration that the property in dispute is undivided and joint property of the plaintiffs and defendant Nos. 4 to 9 and that they have 1/7th undivided share each in the suit property. The relief No. 2, i.e., a declaration to the effect that the deed of sale dated 29.8.2002 executed in favour of the defendant Nos. 1 to 3 by defendant Nos. 4 to 9 is inoperative and ineffective being a consequential relief, no Court-fees is required to

be paid under the law. In support of his contention he referred to the decisions reported in [Sm. Dhiraj Bala Karia Vs. Jethia Estate Pvt. Ltd.,](#) (2) CHN 482 [Paresh Chandra Nath Vs. Naresh Chandra Nath and Others,](#) .

8. Mr. J. R. Chatterjee, learned Advocate appearing on behalf of the opposite parties contended that the revision application is to be rejected firstly, because only one of the plaintiffs out of four has filed this revision application. Secondly, the relief No. 2 i.e. the declaration to the effect that deed of sale in question is ineffective and inoperative being the principal relief, the plaintiffs are supposed to pay Court-fees on the valuation of the property of deed of sale. Mr. Chatterjee, the learned Advocate has contended further that ascertaining valuation of the suit property is an obligation of the Trial Court. Therefore, the order passed by the learned Court is not required to be interfered with.

9. As per as the first contention of Mr. Chatterjee is concerned, I find no force in it at all. The petitioner herein is one of the plaintiff in the suit. He has felt aggrieved by the order and has taken out this revisional application. Simply, because co-plaintiffs have not participated as co-petitioners in this revision, his right to challenge the order does not necessarily evaporate. In my estimate, this petition is maintainable under Article 227 of the Constitution of India.

10. The proposition of Mr. Banerjee, the learned Advocate on behalf of the petitioner that plaintiff are not required to pay Court-fees in respect of consequential reliefs, can not be disputed. The question is whether such a proposition can be applied in the case in hand or not is to be considered. The proposition of Mr. Chatterjee that Court is duty bound to ascertain the proper valuation of the suit and direct the party to put in adequate Court-fees can not also be disputed.

11. I have carefully gone through the copy of plaint filed by the petitioner and other three plaintiffs in the learned Trial Court. It appears on perusal of the same that the plaintiffs have actually prayed for declaration to the effect that the suit property is joint property of them and defendant Nos. 4 to 9 and that each of them has 1/7th share therein. They also prayed for a declaration to the effect that the deed of sale in question dated 29.8.2002 is inoperative and ineffective. A plaint is to be read as a whole including the reliefs prayed for in order to ascertain the correct nature and character of the suit. I have already stated that the plaintiffs instituted the suit praying for declaration that the property in dispute is the joint property and each of them having 1/7th share therein. Reading the plaint as a whole together with the reliefs prayed for makes it abundantly clear that the suit filed by the plaintiff is a declaratory suit simplicitor and relief sought for inform of a declaration that the deed of sale in question is ineffective and inoperative is a consequential relief to the principal reliefs sought for by them.

12. Be that as it may, having heard the learned Counsel for the parties and having considered the materials on record as well as decision referred to by the learned Counsel I find that the suit instituted by the present petitioner together with three others is a suit for declaration simplicitor. The relief sought for in form of declaration to the effect that the deed of sale in question is inoperative and ineffective is a consequential relief to the principal relief for declaration that the suit property is the joint property of the plaintiffs and defendant Nos. 4 to 9 and that each of them has 1/7th share therein.

13. It appears also from the materials that the opposite parties herein did not raise any question as to the valuation of the suit and payment of adequate Court-fees in the Trial Court.

14. The suit reached at the stage of preemptory hearing. This indicates that issues have been framed by the Court before the order impugned was passed. It can well be assumed also that no issue as to "whether or not Court-fees paid is adequate has been-framed. The order impugned was passed by the learned Court suo motu. I accept the proposition of Mr. Chatterjee appearing for the opposite parties that the Court is duty bound to ascertain the valuation of the suit and direct the party to pay requisite Court-fees. Therefore, passing such an order suo motu is not out side the jurisdictions of the Trial Court.

15. I have already found that the suit is for declaration simplicitor and the relief No. 2 being a consequential relief, the plaintiffs suit is not required to be valued on the valuation of the property transferred by deed in question.

16. In this context the decision reported in [Paresh Chandra Nath Vs. Naresh Chandra Nath and Others](#), of this Court which is also cited by Mr. Banerjee appearing on behalf of the petitioner can well be referred to.

17. The facts of that case and that of this case in hand are more or less similar. The Hon"ble Court came to a conclusion that relief for setting aside a deed of sale in a suit for declaration simplicitor is a consequential relief and as such, suit is not required to be valued on the valuation of the property. Whether the deed in question is legal or valid, effective or ineffective, operative or inoperative is a question of fact which is to be decided by the Trial Court whatever the decision of the Court would be on that issue, the jointness of the property in question is to be probed into by the Trial Court. Sitting in a revision, probing into that factual aspect is unwarranted.

18. In the premises above I am of opinion that the suit being a declaratory suit simplicitor is not required to be valued on the valuation of the property. The plaintiffs are not required to pay Court-fees on the value of the impugned deed of sale. Accordingly, the order under challenge is interfered with in this revision application and is set aside.

19. The revision application succeeds and is disposed of.

20. The learned Trial Court is directed to proceed with the preemptory hearing of the suit which is kept in abeyance unnecessarily since 2006 and dispose of the suit on the issues framed by the Court.

21. No order as to costs is passed.

Later on:

22. Urgent photostat certified copy of the judgment, if applied for, be handed over to the parties on compliance of necessary formalities.