(2012) 07 CAL CK 0018

Calcutta High Court

Case No: F.A. No. 23 of 2007

Kanak Prava Das		APPELLANT
	Vs	
Prahlad Kumar Maity		RESPONDENT

Date of Decision: July 5, 2012

Citation: (2013) 2 CHN 460

Hon'ble Judges: Tapan Kumar Dutt, J; Mrinal Kanti Chaudhuri, J

Bench: Division Bench

Advocate: Samiran Giri, for the Appellant; P.B. Sahoo and Amit Baran Das for the respondent Nos. 3 and 4, for the Respondent

Final Decision: Disposed Off

Judgement

Tapan Kumar Dutt, J.

This Court has heard the learned Advocates for the respective parties. The respondent Nos. 1 and 2 as plaintiffs filed a suit for partition against the defendant No. 1/appellant and the defendant Nos. 2 and 3/proforma respondent Nos. 3 and 4. Such suit was numbered as Title Suit No. 22 of 2005 and was placed before the learned Civil Judge (Senior Division), 2nd Court, Contai.

2. It appears that the said suit was initially numbered as Title Suit No. 121 of 2003. The plaintiffs/respondents filed the said suit for preliminary decree for partition in respect of the property described in Schedule Ka/1 to the plaint which the plaintiffs claimed they had purchased from one Alokranjan Sinha and Krishnarani Mondal by a registered Deed of Sale. The total property has been described in Schedule Ka to the plaint.

3. It appears that Schedule Ka/1 property is part of the Ka Schedule property. The Ka Schedule property, according to the plaintiffs, originally belonged to one Amarendra Nath Pal and after his death, his legal heirs, namely, Sourindranath Pal, Haimabati Sinha and Indumati Pal and Kanak Prova Das inherited the said property in equal shares.

4. It further appears that Indumati Pal transferred her 174th share to her brother Sourendranath Pal and thus Sourendranath Pal became owner of 1/2 share of the property.

5. It further appears that there was an amicable settlement between Haimabati Sinha and Kanak Prova Das and in terms of such settlement Haimabati Sinha got Ka/1 Schedule property which she was possessing separately. Thereafter, it seems, that Haimabati Sinha died leaving behind her son Alokranjan Sinha and daughter Krishnarani Mondal. The said Alokranjan Sinha and Krishnarani Mondal transferred the said Ka/1 Schedule property to the plaintiffs by virtue of registered Kobala and the plaintiffs were given possession of the said Ka/1 Schedule property.

6. The plaintiffs have thus filed the suit for partition for having the said Ka/1 Schedule property separated from the total property (Ka Schedule). In the plaint, it appears that there was no prayer for declaring the shares of the defendants as such in respect of the rest portion in the Ka Schedule property (leaving out the Ka-1 Schedule property). None of the defendants also prayed for any decree for partition in respect of their respective shares of the property.

7. It appears from the case of the plaintiffs that the plaintiffs were only interested for having their purchased property (Ka/1 Schedule) separated from the total property (Ka Schedule).

8. The defendant No. 1 contested the said suit by filing a written statement wherein she claimed that she has got ultimately 3/4th share in the property left behind by Amarendra Nath Pal.

9. It is the further case of the defendant No. 1 that she came to learn from the plaint about two sale deeds being executed by her in favour of defendant Nos. 2 and 3 as regards the suit lands bearing Plot Nos. 980, 981 and non-suit plot No. 978. According to the defendant No. 1, the said two deeds were forged, illegal, not acted upon and those were obtained by defendant No. 2 and 3 by practicing fraud. According to the defendant No. 1 she never executed such deeds in favour of the defendant Nos. 2 and 3.

10. The defendant Nos. 2 and 3 also filed a written statement. According to the said defendant Nos. 2 and 3, the defendant No. 1 after inheriting her share pursuant to her father''s death and also inheriting the share of her brother Sourendranath Pal has transferred some portion of the suit land by two registered deeds in favour of the defendant Nos. 2 and 3 and had given possession of the same in favour of the defendant Nos. 2 and 3.

11. The said suit came up for hearing and the learned Trial Court by the impugned judgment and decree decreed the suit in preliminary form declaring that the plaintiff has 1-1/4 decl. in plot No. 980, 2-1/4th decl. in plot No. 981 and 1/2 decl. in plot No. 983, the defendant Nos. 2 and 3 have 1-174th decl. in plot No. 980 and 2

decl. in plot No. 981 and defendant No. 1 has got rest portion of the lands in the said plot Nos. 980,981 and 983.

12. The learned Trial Court directed the parties to effect amicable partition of the properties as mentioned in Schedule Ka of the plaint within a certain time failing which the parties would be at liberty to have the partition effected through Court by appointment of a Commissioner.

13. Challenging the impugned judgment and decree, the defendant No. 1/appellant has filed the instant appeal. It will appear from the impugned judgment that the learned Trial Court went into the question as to whether or not the defendant Nos. 2 and 3 had purchased their property from the defendant No. 1 and as to whether such purchase was a valid one under the law. The learned Trial Court made its findings on such aspect of the matter and declared the share of the defendant Nos. 2 and 3 in respect of Ka Schedule property.

14. At the very outset, it may be noted that the learned Advocates for the defendant No. 1 and the defendant Nos. 2 and 3 respectively did not dispute at all that the plaintiffs have become the owners of Ka/1 Schedule property. That is to say no challenge has been thrown by any of the defendants to the purchase made by the plaintiffs from Alokranjan Sinha and Krishnarani Mondal. The prayer made in the plaint indicates that the plaintiffs were only interested to have their properties separated from the total property being Ka Schedule.

15. The learned Advocate appearing for the defendant No. 1/appellant submitted before this Court by referring to her written statement that she has filed Title Suit No. 153 of 2004 wherein she has challenged the validity and/or legality of the deeds of conveyance on the basis of which the defendant Nos. 3 and 4 are claiming title in respect of her portion of the Ka Schedule property.

16. The said learned Advocate also submitted that the said suit is pending in the Court of the learned Civil Judge, Junior Division, 1st Court, Contai. It will appear from the impugned judgment also that such fact was brought to the notice to the learned Trial Court.

17. The said learned Advocate further submitted that the learned Trial Court should not have gone into the question as to whether or not the alleged title deeds in favour of the defendant Nos. 2 and 3 are genuine and/or valid in the present proceedings, particularly, when no issue in that regard was at all framed by the learned Trial Court. The learned Trial Court framed six issues altogether and none of such issues deals with such question.

18. The said learned Advocate submitted that since the defendant No. 1 does not have any dispute with regard to the claim made by the plaintiffs in respect of Ka/1 Schedule property, the said defendant No. 1 has no objection if a decree for partition is granted in favour of the plaintiffs in respect of Schedule Ka/1 only.

19. The said learned Advocate submitted that when a regular comprehensive title suit is pending wherein the genuineness and/or legality of the title deed in favour of the defendant Nos. 2 and 3 are involved, the learned Trial Court should not have decided such matter in the suit for partition filed by the plaintiffs.

20. The learned Advocate appearing on behalf of the defendant Nos. 2 and 3, as noted above, at the very outset, submitted that the defendant Nos. 2 and 3 have no dispute with regard to the claim made by the plaintiffs for partition in respect of Schedule Ka/1 only, but the said learned Advocate submitted that there is no bar for a Court to also declare the shares of the defendants in the suit for partition and the learned Trial Court did not commit any mistake in declaring the title of the defendant No. 1 and the defendant Nos. 2 and 3 in the impugned judgment.

21. The said learned Advocate further submitted that the findings made by the learned Trial Court with regard to the title deeds in favour of the defendant Nos. 2 and 3 should be allowed to stand.

22. Considering the facts and circumstances of this particular case, the submissions made by the learned Advocates for the respective parties and the materials on record, this Court is of the view that even if it is assumed for the sake of argument that a Trial Court can decree in a preliminary form in a partition suit the shares of the defendants also even when there is no such prayer in the pleadings by the parties, in the facts of the instant case it would be difficult to adopt such procedure.

23. In the present case, it has already been noted above that a dispute has been raised with regard to the alleged Deeds of Conveyance executed by the defendant No. 1 in favour of the defendant Nos. 2 and 3 and a comprehensive title suit is pending in this regard. Even though the learned Trial Court has noted the existence of such suit, the learned Trial Court proceeded to decide the question as to whether or not the alleged deeds of conveyance in favour of the defendant Nos. 2 and 3 were valid or not without framing any issue in this regard.

24. This Court is of the view that while framing issue it could be that the learned Trial Court was of the opinion that such issue need not be resolved in the present proceeding but, subsequently, we find that the learned Trial Court had ultimately decided such dispute without any proper framing of issue. This has practically made the comprehensive suit, which has been filed by the defendant No. 1 against the defendant Nos. 2 and 3 in this regard, infructuous.

25. As we have already noted above, the prayer made in the instant suit was a simple prayer for allowing the plaintiffs to have a partition in respect of her purchased property. Since there was a serious allegation by the defendant No. 1 against the defendant Nos. 2 and 3 with regard to their sale and/or purchase of the property concerned, it was not necessary for the learned Trial Court to go into such question in the present proceeding, particularly, when a comprehensive suit in this regard is pending.

26. In view of the discussions made above, we are of the view that the declaration made by the learned Trial Court in so far as the right, title and interest of the plaintiffs are concerned in the impugned judgment should be allowed to stand but the rest of the declaration with regard to the right, title and interest of the defendant No. 1 and the defendant Nos. 2 and 3 should be set aside. Of course, we make it clear that we are not going into the merits of the claim made by either the defendant Nos. 2 and 3 or the defendant No. 1 in respect of their respective title to the property concerned and it is left open for the defendant No. 1 on the one hand and the defendant Nos. 2 and 3 on the other hand to resolve the dispute amongst themselves either by way of amicable settlement or through Court, as the case may be.

27. We, thus, set aside the findings made by the learned Trial Court with regard to the validity and/or legality or otherwise of the alleged title deeds in favour of the defendant Nos. 2 and 3 (allegedly executed by the defendant No. 1) and we also set aside the preliminary decree and/or declaration made by the learned Trial Court in so far as the right, title and interest of the defendant No. 1 and the defendant Nos. 2 and 3 in the part of the title suit property concerned.

28. Accordingly, the present appeal is disposed of by modifying the impugned judgment and decree to the following extent:

(i) The impugned judgment and decree in a preliminary form passed by the learned Trial Court to the effect that the plaintiff has 1-1/4th decl. in plot No. 980,2-1/4th decl. in plot No. 981 and 1/2 decl. in plot No. 983 is allowed to stand.

(ii) The preliminary decree and declaration made by the learned Trial Court in the impugned judgment in respect of the defendant No. 1 and the defendant Nos. 2 and 3 as contained in the impugned judgment are set aside.

29. There will be, however, no order as to costs.

30. Let the lower Court records be sent down to the learned Court below immediately. Urgent certified xerox copy of the judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of necessary formalities.

Dr. Mrinal Kanti Chaudhuri, J.

I agree.