

(1993) 03 CAL CK 0043**Calcutta High Court****Case No:** CO. No. 1168 of 1992

Amar Nath Hait

APPELLANT

Vs

Panchanan Santra and Others

RESPONDENT

Date of Decision: March 24, 1993**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 22 Rule 9, 151

Citation: 97 CWN 598**Hon'ble Judges:** Nripendra Kumar Bhattacharyya, J**Bench:** Single Bench**Advocate:** P.K. Banerjee and Sila Sarkar, for the Appellant; Animesh Goswami, for the Respondent**Final Decision:** Allowed

Judgement

Nripendra Kumar Bhattacharyya, J.

The revisionists by this revision challenge the order No. 55 dated 22.9.92 passed by Shri P.S. Banerjee, Assistant District Judge, Additional Court of Hooghly, in Title Appeal No. 10 of 1988 staying further proceedings of the appeal being Appeal No. 10 of 1988 till the disposal of the Misc. Case No. 8 of 1991 pending before the Munsif, Third Court, Serampore arising in connection with Title Suit No. 55 of 1990. In short, the fact of the case is that originally the suit property belonged to one Putibala and after her death Guinbala inherited the said property.

2. The opposite party No. 1 & 2 and the predecessor-in-interest of the opposite party No. 3, 4 & 5 late Panchanan Shantra are the cousins of said Guinbala. Guinbala was an illiterate lady and was solely dependent on opposite party No. 1-5.

3. The opposite party No. 1, 2 and the said late Panchanan Santra obtained a deed of sale from Guinbala by making misrepresentation and by virtue of the said sale Guinbala had only life interest in the suit property.

4. The opposite party No. 1-5 were allowed to cultivate the suit land as "bargadar but they failed to deliver the bhag produce to Guinbala and a Bhagchas case was started but ultimately ended in a compromise.

5. The opposite party No. 6 & 7 were permitted to cultivate the suit land as bargadar. They also by misrepresentation got a deed dated 9.11.92 from Guinbala. Guinbala came to know of that deed only after service of summons on her in connection with, Title Suit No. 156 of 1983 filed by opposite party No. 1-5 herein for declaration and injunction. The said suit is pending in the Third Court of Munsif, Serampore. Guinbala appeared and contested the suit but the opposite party No. 6 & 7 did not contest that suit.

6. Guinbala also brought a Title Suit being Title Suit No. 11 of 1984 since renumbered as Title Suit No. 78 of 1987 in the Additional Court of Munsif, Serampore.

7. The learned First Munsif, Serampore by his order dated 29.11.85 order for analogus hearing of the said two suits.

8. However, Title Suit No. 78 of 1987 was heard and decreed in favour of the plaintiff Guinbala and after passing of the decree in that Suit Guinbala sold the suit property by two deeds of sale dated 25.1.88 to the petitioner No. 1 & 2 respectively.

9. Against the said judgment and decree passed in Title Suit No. 78 of 1987 the opposite parties No. 1 to 5 preferred an appeal in the Additional Court of Assistant District Judge, Hooghly which was registered as Title Appeal No. 10 of 1988.

10. During the pendency of the appeal Guinbala died and the opposite parties No. 1 to 5 made an application in the appeal stating the factum of death of Guinbala and claiming that they have inherited the property of Guinbala as her sole heirs and legal representatives.

11. The opposite party No. 8 & 9 also by an application dated 7th March, 1990, disclosed that there are other heirs of late Guinbala.

12. The present petitioners on coming to know about the aforesaid appeal made an application for adding them as party respondents in the appeal under order 22 Rule 9 and order 1 Rule 10 read with Section 151 of the Code of Civil Procedure.

13. The said three applications were allowed by the Learned Additional Assistant District Judge, Hooghly by order No. 30 dated 1.9.90.

14. The opposite party No. 1 to 5 made another application in the said appeal on 13.1.92 praying for stay of the aforesaid appeal on the allegation that the suit brought by Guinbala, being Title Suit No. 11 of 1984, since renumbered as Title Suit No. 78 of 1987, in the Additional Court of Munsifs, Serampore and the suit brought by the opposite parties No. 1 to 5, being Title Suit No. 156 of 1983, since renumbered as Title Suit No. 55 of 1990 in the Third Court of Munsif, Serampore for

a declaration that the suit properties are joint properties of the opposite parties No. 1 to 5 and Guinbala had no right Title and interest in respect thereof, as such she had no right to transfer the same in favour of opposite parties No. 6 & 7, were ordered to be tried analogously. However, the suit brought by Guinbala was decreed in favour of the plaintiff. The opposite party No. 1 to 5 did not take any step in their suit as they were under the bonafide impression that their suit would be tried analogously along with the suit of Guinbala. So their suit was dismissed and was restored subsequently.

In that suit they filed an application for substitution and a Misc. case, being Case No. 3 of 91, has been registered. It has further been alleged that unless the appeal is stayed till the hearing of the Misc. Case they would suffer irreparable loss and injury.

15. Though the opposite party No. 6 & 7 contested that application for (sic) by filing a written objection, the petitioners herein could not contest that application as the copy of the said application was not served on them and they were not in the know of the said petition. Only on the 2nd week of May, 1992, while making an enquiry in the Court about the appeal they came to know that the appeal has been stayed by order No. 55 dated 22.2.92 and immediately they applied for certified copy of that order and on getting the same they moved this Court in revision.

16. Mr. Banerjee, the Learned Advocate for the petitioners, contended that as the stay order was passed without giving any opportunity to the petitioner to contest that application the order impugned is illegal and suffers from jurisdictional error.

17. Mr. Goswami the Learned Advocate for the opposite party No. 1 to 5, contended that there is no jurisdictional error committed by the Learned Assistant District Judge in passing the impugned order. He further submitted that the order may be best be irregular but not without jurisdiction.

18. Considering the submissions of the Learned Advocate for both the parties and the facts on record, I am of the opinion that the petitioners have been deprived of the opportunity to contest the application for stay.

19. Though the petitioners have been added as party respondents in the appeal on 1.9.90 and brought on record as per order No. 30 dated 1.9.90, the learned Judge observed in his order that the application of the petitioners under order 1 rule 10 of the CPC is pending.

20. It is the bounden duty of the Court to afford an opportunity of hearing to the interested parties on record in the proceeding. But in the instant case, though the petitioners were on record in the appeal, the Ld. Judge failed to give them an opportunity of hearing by way of contesting the stay petition in not giving any direction to the appellants to serve copy of the stay application upon the present petitioner and that caused miscarriage of justice and jurisdictional error.

21. Accordingly, the impugned order should not be sustained.

22. In the result the revisional application succeeds. The impugned order dated 22.2.92 is hereby set aside. The Learned Judge is directed to dispose of the stay application after giving opportunity to all the parties concerned to contest the said application. There will be no order as to costs. This also disposes of the injunction application. Application allowed. A.K.R