
(2012) 06 CAL CK 0077

Calcutta High Court

Case No: C.O. No. 610 of 2009

Guruprosad
Chakraborty and
Another

APPELLANT

Vs

Umarani Kundu
Chowdhury and Others

RESPONDENT

Date of Decision: June 15, 2012

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Bidyut Kumar Banerjee and Ms. Shila Sarkar, for the Appellant; Ranjit Kumar Jaiswal and Mr. Nandalal Pradhan for the Opposite Party No. 5, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the plaintiffs and is directed against the Order No.76 dated January 16, 2009 passed by the learned Civil Judge (Senior Division), Sealdah in Title Suit No.150 of 2000 thereby allowing the defendant no.4 to repair the Schedule "B" property as described in the application at his own cost without changing the nature and character of the property. Being aggrieved, this application has been preferred. The plaintiffs / petitioners herein instituted a suit being Title Suit No.150 of 2000 against the defendants / opposite parties for declaration that a certain deed of declaration executed by defendant no.2 in 1999 is void, invalid, inoperative and not binding upon the plaintiffs, for further declaration that the deed of conveyance executed by the defendant no.s 1, 2 and 3 in favour of the defendant no.4 executed in the year 1999 is void, inoperative and not binding upon the plaintiffs.

2. The plaintiffs have contended in the plaint that they purchased the suit property by a registered deed of sale in 1997 from the vendors of the defendant no.s 1, 2 and 3 and that after purchase they took necessary steps for mutation and other steps. A dispute cropped up over the right, title and interest on the suit property. In the mean time, the

defendant no.4 has prayed for repair of the suit premises as indicated above. That application was allowed by the impugned order. Being aggrieved, this application has been preferred by the plaintiffs.

3. Now, the question is whether the impugned order should be supported.

4. Having considered the submissions of the learned Advocates of both the sides and on perusal of the materials on record, it is found, prima facie, that the plaintiffs' deed in respect of the suit property being of the year 1997 is prior to the deed executed by the defendant no.s 1, 2 and 3 in favour of the defendant no.4 in the year 1999. Another deed of rectification was also executed by the defendant no.2.

5. Anyway, these are the matters to be adjudicated at the time of trial. The defendant no.4 has prayed for repair of the Schedule "B" property of the plaint. If the schedule of such property for repair is perused, it would reveal that by the garb of repair, the defendant no.4 has practically wanted to change the entire "B" suit property according to his own choice. When there are rival claims, the object of granting such type of relief is to be viewed from the angle that during the pendency of the suit, the property in suit should be kept status quo so that nothing is altered during the pendency of the suit. The defendant no.4 has claimed that the "B" schedule property is in dilapidated condition but in fact, there is no convincing material such as photograph or any report from a Commissioner holding local inspection in support of the claim or any order of the Kolkata Municipal Corporation. Since the application clearly lays down a thorough repair of the Schedule "B" property as a whole, I am of the view that the learned Trial Judge is not justified at all in allowing the prayer for repair. Similarly, his observations that if the proposed repair is allowed, it will not cause the change the nature and character of the suit, cannot be supported.

6. Accordingly, I am of the view that the impugned order cannot be supported. The learned Trial Judge has, therefore, committed illegality and material irregularity in passing the impugned order and he has also passed the order on a misconception of law.

7. Accordingly, the revisional application succeeds and is, therefore, allowed.

8. The impugned order is hereby set aside. The application for repair filed by the defendant no.4 stands rejected.

9. However, since the suit being of the year 2000, the learned Trial Judge shall take effective steps for early disposal of the suit. He shall not grant unnecessary adjournments to either of the parties to ensure expeditious disposal of the suit.

10. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.