

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

CO 1317 of 2022
With
CAN 3 of 2023

Sri Jayanta Kumar Halder
Vs.
Asutosh Bhattacharyya & Ors.

For the petitioner : Mr. Amitabha Roy
Mr. Tamal Banerjee

For the opposite party Nos. 14 to 16 : Mr. Lakshminath Bhattacharya

Hearing concluded on: 19.06.2023
Judgment on: 17.10.2023

Shampa Sarkar, J.:-

1. This revisional application had been filed challenging the order dated April 18, 2022 passed by the learned Civil Judge (Jr. Division), 2rd Additional Court at Diamond Harbour, in Title Suit No.153 of 2004. The petitioner was the plaintiff No.1 in the said suit.

2. By the order impugned, the learned Court, rejected an application filed by the petitioner dated April 4, 2022 with a prayer to send the LTI book of the deed No 2615 dated August 19, 1931 and the LTI book of the admitted deed No 528 dated November 4, 1929 to the D.I.G., C.I.D, Fingerprint Bureau, Bhabani

Bhaban, Alipore, for a report upon comparison of the left thumb impression of Dhanapati Halder and Manmotha Chandra Halder in two documents. The learned Court rejected the application filed by the petitioner with cost, on the ground that the petitioner was trying to procrastinate the proceeding by repeatedly filing such applications. The petitioner denied the LTI and signature of Dhanapati and Manmotha in the deed dated August 19, 1931. The defendants claim title on the basis of such deed.

3. The learned Court, further held that ample opportunity had been given to the petitioner to bring the LTI books. According to the learned court, by an order dated December 5, 2009, the petitioner had already been debarred from taking steps for production of the LTI books. Moreover, the certified copy of the deed of 1931 which was produced by the petitioner, could not be sent for comparison of the signatures.

4. The main contention of the petitioner was that the learned Court overlooked order No. 100 dated January 29, 2010, which was passed after the order dated December 5, 2009. By the order dated January 29, 2010, the learned Court itself allowed the plaintiff to call for the LTI book, for the ends of justice. Thus, the order dated December 5, 2009 stood recalled. The petitioner contended that the learned Court below while rejecting the application, erroneously held that the said application had been filed to procrastinate the proceedings. The facts in issue in the suit, would depend upon the scientific report of an expert, upon comparison of the two LTIs. Whether the LTI of Dhanapati Halder and Manmotha Chandra Halder in the LTI book/ volume in

which the deed No. 2615 was entered, matched with the LTI in the volume in which the admitted deed dated November 4, 1929 was entered, would be relevant evidence to prove the plaint case.

5. The petitioner further submitted that Book no. 1 Volume no. 26 for the year 1931 was available. In 2019, the petitioner applied for the certified copy of the deed dated August 19, 1931 which was supplied to the petitioner. The same was also filed in the proceeding.

6. Mr. Bhattacharya, learned advocate appearing on behalf of the opposite parties Nos. 14-16, who are the heirs of the contesting defendant No 4 in the suit, opposed the prayer of the petitioner. Learned Advocate submitted that the learned Court had given ample opportunity to the petitioner and issued orders summoning the LTI book in respect of the registered deed dated August 19, 1931. The same was not produced by the Sub-Registrar, Alipore, and ultimately the records revealed that a complaint with regard to the missing volume had also been filed by the concerned authority before the local police station.

7. Mr. Bhattacharya further submitted that the petitioner's suit was dismissed some time in 2010 for non-compliance of the orders of the learned trial Court. The petitioner was not a diligent litigant. The petitioner was continuously trying to delay the suit by filing frivolous applications. The existence of the deed of 1931 was recorded in a subsequent suit, in which the petitioner was not a party. At such an advanced stage of the suit, allowing the application filed by the petitioner would only amount to delay in disposal of a

frivolous suit and such delay would cause irreparable loss and injury to the said defendants. The defendants were trying to protect their property, legitimately acquired down the line, on the basis of the deed of 1931.

8. The facts of the case were that the petitioner along with the opposite parties No 35 to 61 (pro forma opposite parties) filed a suit for declaration of the right, title, interest and permanent injunction in respect of 30 decimals, in plot no. 818 and 16 decimals in plot no. 820, totalling to 46 decimals of Mouza; Maheshnagar, Police Station; Magrahat (earlier) Mandirbazar (at present); Post Office- Bangaberia; District- 24 Parganas-South. The plaintiffs contended that Dhanapati Halder and Manmotha Chandra Halder had mortgaged the suit property along with some other property in favour of Jyotindra Nath Bhattacharjee, sometime in November 1929. Thereafter, the properties were released from the mortgage in 1931. After release of the mortgage Dhanapati and Manmotha and their family members continued to be in possession of the suit property. Manmotha, Dhanapati and their family members entered into an amicable partition in respect of all their common properties which included the suit property. Plot No 839 was sold out to Surendra Nath Haldar and the name of Surendra Nath Haldar has been recorded in the revisional settlement. The share of Dhanapati in Plot Nos. 820 and 818 devolved upon his son Satish Chandra Haldar. Thus Satish Chandra Haldar and Manmotha continued to be the recorded owner of the said plot, but the names of Jyotindra Nath Bhattacharjee, Satish Chandra Bhattacharjee, Hiranmayee Bhattacharjee Bhudeb Bhattacharjee, and Anadi Bhattacharjee, were wrongly entered in the

record of rights. Satish Chanda Haldar died leaving behind the plaintiff No 3(Kamal Kanta Haldar). The plaintiff No 3 acquired right, title and interest in the share of Satish Chandra Haldar which was originally owned by the Dhanapati Haldar in plot Nos. 820 and 818. Manmotha Haldar died leaving behind plaintiffs No 1, 2 and 6 daughters who were plaintiff Nos. 4-9. These daughters, namely plaintiff Nos. 4-9 had surrendered their share in favour of their brothers. The plaintiffs were in possession. As the defendants were trying to raise a claim in respect of the property in question and were disturbing the possession of the plaintiffs, the suit was filed for declaration of right, title, interest and permanent injunction. Further allegation was that the defendants had erroneously and by practicing fraud got their names recorded in the revisional settlement.

9. Only the defendant No 4, contested the suit by filing a written statement. The specific case of the defendant was that the suit property had been mortgaged along with some other property to Jyotindranath Bhattacharjee by Dhanapati and Manmotha. Thereafter, the properties were released from the mortgage and Dhanapati and Manmotha got back their right title and possession in respect of the said property. Subsequently, Dhanapati and Manmotha being in need of money, sold the suit property to Haripada Bhattacharjee by a deed of conveyance dated August 19, 1931. Haripada Bhattacharjee acquired right title and interest in the property in question. Haripada Bhattacharjee died leaving behind four sons, Upen, Amar, Bhupen, Binoy. Upon the death of Bhupen, his property devolved upon his children

namely, Sudhir, Tarani and Taron. After the death of Tarani, the share of Tarani devolved upon Smt. Drugabala. Upon death of Binoy, his share devolved upon Smt Kalidasi and son, Fani Bhusan. Accordingly, the heirs of Haripada Bhattacharjee acquired the right, title ownership in respect of the suit premises. The heirs of Haripada sold the property to Jyotindra, Satish, Srish and Mohon Bhattacharjee. The heirs of Dhanapati did not have any right title interest in respect of the suit property and the property devolved upon the heirs of Jyotindra, Satish, Srish, and Mohon by subsequent deed of gift dated January 6, 1981 and deeds of sale dated May 12, 1988 and July 21, 1993. The defendants acquired right, title and interest in respect of the property in question. The right title and interest of the predecessor in interest of the defendants has also been upheld in Title Suit No. 818 of 1947. Title Suit No. 210 of 1998 which was originally filed by the plaintiffs was transferred to the court of the learned Civil Judge Jr. Division, 3rd Court at Diamond Harbour and thereafter to the Court of the learned Civil Judge Jr. Division, 2nd Additional Court at Diamond Harbour. The said Title Suit was renumbered as Title Suit No 153 of 2004. The defendants were in occupation of the said suit property and their names had been entered in the record of rights.

10. Thus, the pleadings would reveal that the plaintiffs and the defendants both claim right title and interest in respect of the suit property. While the plaint case was that the heirs of Dhanapati and Manmotha had acquired right, title and interest in respect of the property in question after the said property was released from the mortgage created by Dhanapati and Manmotha, the

defendants claim right, title and interest through their predecessor in interest Haripada Bhattacharjee and on the basis of a deed of sale dated August 19, 1931 and subsequent sale and gifts. When the plaintiffs, for the first time, came to know of the alleged transfers from the written statement, an application was filed for amendment of the plaint to incorporate a challenge to the deeds, namely, deed of gift dated January 6, 1981 and deed of sale dated May 12, 1988 and July 21, 1993.

11. The said application for amendment was allowed by an order dated August 31, 2005 and the plaintiffs filed the amended plaint. The contesting defendant filed additional written statement. Although the defendant No. 4 relied on the alleged deed of sale, dated August 19, 1931, the original deed was not produced before the learned Court below. The defendant filed a handwritten certified copy of the deed. The plaintiffs contended that it was not possible for the plaintiffs to verify the signature of Dhanapati Halder and Manmotha Halder appearing in the said deed and the signature should be compared with the admitted deed dated November 4, 1929.

12. The plaintiffs filed an application on October 25, 2005 for appointment of an expert to compare the thumb impression of Dhanapati Halder and Manmotha Halder available in the volume containing the entry of the deed dated November 4, 1929 with those appearing in the volume containing entry of the deed dated August 19, 1931. It was prayed that the two thumb impression books of the aforementioned two deeds be produced before the learned court. By an order dated March 15, 2006, the said application was

allowed. The learned court, by the order dated March 15, 2006, recorded that for determination of the real question in controversy, appointment of a fingerprint expert was necessary. The plaintiffs were directed to produce the LTI book within April 5, 2006, in default of which, the order would be set aside in order to avoid inordinate delay. Thereafter, by an order date April 20, 2006, the plaintiffs were directed to issue notice upon the Alipore registry office so that the LTI books from the Alipore registry office could be produced. Again, dates were fixed for production of the LTI books.

13. A defendant expired. Substitution was allowed and a direction was passed for adding the heirs and legal representatives of the deceased defendant. It appears that the suit could not proceed on the account of transfer of the presiding officer, and also on account of the death of a defendant. On July 10, 2009, the application filed by the plaintiff for a direction upon the DSR to send the document by currier was allowed. By an order dated October 30, 2009, the court recorded that on several occasions the District Registry had been directed to produce the LTI books, but no such book was presented and the learned advocate for the defendant No 4 prayed for issuance of warrant. On November 17, 2009, the plaintiffs filed an acknowledgement indicating further receipt of summons by the office of the District Registrar.

14. By an order dated, December 5, 2009 the learned court recorded that since March 15, 2006 the plaintiffs were unable to cause production of the LTI books for examination by an expert. That the suit had reached a stagnant condition. The plaintiffs had been given ample opportunity to bring the LTI

books, but failed to avail of the said opportunity. Hence, the court found that the suit could not be kept in a state of limbo awaiting production of the LTI books. The plaintiffs were barred from taking any step with regard to the said prayer. Thereafter, the plaintiffs filed an application for recalling of the said order. By an order dated, January 29, 2010, the application of the plaintiff to call for the LTI book was considered and allowed for the ends of justice. The order dated December 5, 2009 stood recalled.

15. The plaintiffs filed another application for amendment. Thereafter, the plaintiffs prayed for several adjournments on several occasions and the learned court rejected the application for adjournment as the court was of the opinion that the plaintiffs were delaying the suit and asked the plaintiffs to show-cause. The suit was dismissed on April 29, 2010 for non-compliance of the court's order as no show-cause had been filed. The suit was restored to its original file and number being Title Suit No.153 of 2004.

16. The Additional Sub-registrar (record), Alipore 24 parganas, (South), informed the learned court below that volume No 26 being the copy of the alleged deed, dated August 19, 1931 and the LTI books of SR Mograhat vide LTI Nos. 3991 and 3992 were missing from the record room since long and a general diary, to that effect, had been lodged before the inspector-in-charge, Alipore police station. Finding no other alternative, the plaintiffs filed an application for bringing Index-I and Index-II of the deed of 1931 from the office of the District Registrar, Alipore to prove their case. Upon hearing the respective parties, the learned court held that as the execution of the deed of

1931 was not under challenge by the plaintiffs, there was no necessity for bringing Index-I and Index-II of the deed.

17. Strangely, the plaintiffs applied for a certified copy of the deed of 1931 on November 15, 2019 and on November 22, 2019 a certified copy of the alleged deed was supplied to the plaintiff. A copy of the certified copy of the alleged deed No 2615 of the year 1931 has been annexed to the revisional application as "P-9". As the learned court below had observed by order dated September 13, 2019 that the plaintiff had not challenged the execution of the alleged deed of 1931, the plaintiffs filed an application for amendment in order to incorporate a prayer in the plaint challenging the deed dated August 19, 1931.

18. Once again an amendment was sought for, in order to incorporate prayers with regard to deed of August 19, 1931 and all subsequent deeds as also the decree passed in Title Suit No 818 of 1947. The said application was allowed on contest. The amended plaint was filed and the defendants filed the additional written statement. Once again, the plaintiffs filed an application on April 4, 2022 for a direction upon the District Registry to send the LTI book the deed dated August 19, 1931 and the LTI book of the admitted deed dated, November 4, 1929, so that the same might be sent to the D.I.G., C.I.D, Fingerprint Bureau, Bhabani Bhaban, Alipore for scientific opinion. According to the plaintiffs, the report would be necessary for adjudication of the issues involved in the suit. By the order impugned, the learned court below rejected the application.

19. This court finds that the order impugned suffers from the following irregularities:-

- a) By the order dated, January 29, 2010, the learned court below once again allowed the prayer of the plaintiffs for a direction upon the District Registrar, Alipore to produce the LTI books relating to the two deeds. Thus, the earlier order rejecting such prayer of the plaintiffs passed on December 5, 2009 stood recalled by the subsequent order dated January 29, 2010.
- b) That the question of procrastination did not arise, as the plaintiffs were praying for scientific examination of the LTIs.
- c) It was not incumbent upon the plaintiffs to produce the LTI books, but the District Registry was bound to produce the same upon summons being issued by the learned court.
- d) That the report of the additional sub-registrar (record) of Alipore alleging that the volume of that Volume No.26, LTI book of the deed of 1931 was missing, creates a doubt, as the plaintiffs had subsequently been supplied with a certified copy of the same deed on November 22, 2019.
- e) As the trial court had granted a chance to the plaintiffs to seek production of the LTI books of the two deeds, being deed No 2615 dated August, 19, 1931 and deed No 528, dated November 4, 1929, the application should have been allowed for the ends of justice. The District Registry, Alipore should have been directed to produce the LTI books of the deed 2615 dated August 19, 1931 and deed No. 528 dated November

4, 1929. When the plaintiffs produced the certified copy of the deed dated August 19, 1931 which was supplied to the plaintiffs on November 22, 2019, the availability of the volumes cannot be doubted. Certified copy of the deed was issued in November 2019. This court has reason to believe that the LTI books are available.

22. Accordingly, the revisional application is allowed and the order impugned is set aside. The learned court below is directed to issue summons upon the Additional District Sub- Registrar, Alipore to produce the aforementioned volumes/LTI books of deed No. 2615 dated, August 19, 1931 and deed No 528 dated November 4, 1929. On failure, stringent orders may be issued as the court deems fit and proper. On production of the same, the LTI books shall be sent to the appropriate department of the government for comparison of the fingerprints (LTI) as prayed for by the plaintiffs. The necessary report shall be filed before the learned court within the time fixed by the court.

23. Upon production of such report, the learned court will proceed in accordance with law and dispose of the suit on its own merits.

24. The observations hereinabove are all tentative and shall not influence the trial.

25. Under such circumstances, the revisional application is disposed of.

26. There will be no order as to costs.

27. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)