

(2019) 12 CAL CK 0081

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (CO)No. 2759 Of 2019, Civil Application (CAN)
No. 9080 Of 2019

Jyotirmoy Chakraborty

APPELLANT

Vs

Anirban Chakraborty & Anr

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24

Citation : (2019) 12 CAL CK 0081

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Shiba Prasad Mukherjee, Debabeena Mukherjee, Kurram Feroz, Kallol Basu, Prabin Maji, Pronita Mondal, Kunal Ganguly, Jayanta Narayan Chatterjee, Suprem Naskar

Judgement

Bibek Chaudhuri, J

1. This is an application under Section 24 of the Code of Civil Procedure filed by one Jyotirmoy Chakraborty, plaintiff of Title Suit No.151 of 2015 presently pending before the learned Civil Judge (Junior Division), 1st Court of Nadia to any court of competent jurisdiction at Alipore in the district of South 24 Parganas. The opposite parties are the grand-son and the eldest son of the petitioner respectively.

2. Factual background leading to the filing of the application to transfer the above mentioned suit is as follows:-

3. The plaintiff/petitioner was executed a deed of gift on 25th May, 2017 in favour of opposite party No.1 in respect of premises No.24 Amlakitala Lane, Ranaghat. In the year 2017 the petitioner seriously suffering from heart disease and he had to undergo bypass surgery on 31st March, 2017. To his utter dismay, the petitioner found that immediately after execution of the said deed of gift, the opposite parties started behaving with him and his wife with cruelty. The

petitioner had to leave his ancestral house on 21st September, 2017. Subsequently, he filed the above mentioned suit for cancellation of the said deed of gift executed by him in favour of opposite party No.1. After the petitioner being compelled to leave his house at Premises No.24, Amlakitala Lane, Ranaghat, he takes shelter in his younger son's house at Premises No.3/218 Vidyasagar Colony within P.S Netajinagar, Naktala, Kolkata. Due to old age and various diseases, it is not possible for the petitioner to attend the court of the learned Civil Judge (Junior Division) at Ranaghat, Nadia to conduct the said suit. The wife of the petitioner is also aged about 72 years and she is also not in a position to travel alone to attend proceedings of the said suit. If the petitioner is compelled to conduct the said suit at Ranaghat, he will have to travel approximately for about three hours from his present residence to reach Ranaghat Court. On the other hand, the court of Civil Judge (Junior Division) at Alipore is situated at a distance of about 9.4 k.m away from Naktala and it takes about 38 minutes to reach Alipore Court by public conveyance. Therefore, the petitioner has prayed for transferring the above mentioned suit from Ranaghat to Kolkata.

4. The opposite parties have been contesting the suit by filing affidavit-in-opposition. It is specifically stated by the opposite parties that on the date of execution of the deed of gift the opposite party No.1 was a student of B.Tech in a Government Engineering College and the opposite party No.2 is a government employee. The petitioner categorically denied the allegation of putting force upon the petitioner for getting a deed of gift executed in favour of opposite party No.1. It is also contended that the petitioner was always looked after with due care and caution by the opposite parties. The opposite party No.1 even donated blood at the time of bypass surgery of the petitioner. That on 20th May, 2017 the petitioner himself lodged a complaint against his younger son at Ranaghat P.S. Subsequently, on 25th September, 2017, the petitioner submitted an application before the Sub-Divisional Maintenance and Welfare Tribunal at Ranaghat on 25th September, 2017 alleging, inter alia, that the opposite parties used to torture him mentally. Police conducted inquiry on the said allegation and submitted a report before the Chairman, Maintenance and Welfare Tribunal at Ranaghat stating, inter alia, that all such allegations made by the petitioner was false. The petitioner voluntarily on his own wish executed the deed of gift in favour of opposite party No.1 in respect of his premises. The said deed of gift was acted upon. There was no force, undue influence, coercion etc upon the petitioner to execute the said deed. It is absolutely false to say that the petitioner left his Ranaghat house on 23rd September, 2017. In his application before the Sub-Divisional Maintenance and Welfare Tribunal, Ranaghat filed on 25th September, 2017 as well as in an affidavit-in-opposition filed by Smt. Rubi Chakraborty, wife of the petitioner on 7th March, 2019 in connection with W.P No.16696(W) of 2018, the residential address of the petitioner was stated at Ranaghat. It is further contended by the opposite parties that in Title Suit No.115 of 2017, the petitioner's evidence was concluded on commission. The said suit is pending for

examination of the witnesses on behalf of the defendants/opposite parties. Most of the witnesses on behalf of the opposite parties are resident of Ranaghat or Government Officials posted at Ranaghat. If the suit is transferred to Alipore, the opposite parties will suffer irreparable loss and injury. The opposite parties have also contradicted the statement made by the petitioner about his health. Under such circumstances, they prayed for dismissal of the application under Section 24 of the Code of Civil Procedure.

5. The petitioner has filed an affidavit-in-reply, reiterating his stand taken in the application filed by him.

6. I have heard Mr. Shiba Prasad Mukherjee, learned Advocate for the petitioner, Mr. Kallol Basu, learned Advocate for the opposite party No.1 and Mr. Jayanta Narayan Chatterjee, learned Advocate for the opposite party No.2.

7. It is not in dispute that the petitioner is aged about 82 years. The opposite parties have also not disputed that the petitioner had undergone bypass surgery sometimes in March, 2017. Deed of gift was executed in favour of opposite party No.1 in the month of May, 2017. The Title Suit No.151 of 2017 was filed in the year 2017 itself. It is contended by the petitioner that he was forced to leave his Ranaghat premises on 23rd, September, 2017.

8. It is also matter of record that series of litigation are pending between the father on one side and his eldest son and grand-son. The petitioner has been residing at present in the house of his younger son at Naktala. The learned Advocate for the petitioner but not dispute with evidence of the petitioner has already been recorded on commission under Order 26 Rule 14 of the Code of Civil Procedure. It is submitted by Mr. Kallol Basu, learned Advocate for the opposite party No.1 that since the evidence of the petitioner is concluded on commission, it is not necessary for him to attend Ranaghat Court on each and every date of hearing of the application. Moreover, the Court should not ordinarily exercise discretionary power under Section 24 of the Code of Civil Procedure where trial of the case is almost on the verge of completion. According to Mr. Basu, the petitioner has taken all such steps against the opposite parties on being instigated by his younger son but previously the petitioner had to lodge a complaint against the said younger son after being tortured and humiliated by him. Mr. Basu invites the Court to consider all such aspects while exercising discretion under Section 24 of the Code of Civil Procedure.

9. Mr. Jayanta Narayan Chatterjee has adopted the submission made by Mr. Basu.

10. Dispute over a dwelling house owned by the petitioner has reached to such extent between the father and son that the parties are fighting legal battle. Series of proceedings were initiated by and between the parties. Admittedly, the petitioner is aged about 82 years when he was 80 years of age he underwent bypass surgery. The petitioner has been staying at his youngest son's house at Naktala within the jurisdiction of Alipore. It is our common experience that in trial court parties do require to take step personally through their learned

Advocates. In other words, personal appearance of the parties is considered to be absolutely necessary in the trial court. This Court is not in a position to accept the submission made by Mr. Basu that since evidence of the petitioner has been recorded, the suit will proceed even if he does not appear in the trial court during evidence on behalf of the defendants.

11. Apart from legal issue, it is open for the court to exercise its power of discretion with due care and caution solely on humanitarian ground to protect an octogenarian ailing person from travelling a distance of about three hours in one way to conduct his case in a particular court.

12. For the reasons stated above, I am inclined to allow the instant application under Section 24 of the Code of Civil Procedure.

13. Title Suit No.151 of 2017 be transferred to the Court of learned Civil Judge (Junior Division), Alipore having jurisdiction over Naktala P.S for further trial and disposal.

14. The department is directed to send a copy of this order to the learned Civil Judge (Junior Division), 1st Court of Nadia to any court of competent jurisdiction at Alipore in the district of South 24 Parganas for information and compliance of the order.

15. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.