
(2011) 03 CAL CK 0067
In the Calcutta High Court
Case No : C.O. No. 3295 of 2008

Rathindra Nath Kar

APPELLANT

Vs

Jhantu Charan Bera and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2011) 03 CAL CK 0067

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Gautam Guria, for the Appellant;None appears, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the Petitioner and is directed against the orders dated February 14, 2008 and March 13, 2008 passed by the learned Civil Judge (Junior Division), Haldia in Title Suit No. 235 of 1993 thereby granting the prayer for analogous hearing of this suit along with the other suit being Title Suit No. 3 of 1994.

2. The short fact is that the Petitioner as Plaintiff instituted a title suit being Title Suit No. 235 of 1993 on October 7, 1993 in the Court of the learned Civil Judge (Junior Division), Haldia for declaration of title and permanent injunction against the opposite party in respect of 13 decimals of land out of 52 decimals of land in R.S. Plot No. 422/510, Khatian No. 108/1 within Mouza-Brajanath Chawk under Police Station - Haldia. The Petitioner has contended that the total 52 decimals of land in the plot in suit originally belonged to one Himangshu Sekhar Maity who transferred the said land by a registered deed dated February 14, 1966 to one Bijay Krishna Sahoo and the said Bijay Krishna Sahoo subsequently transferred 26 decimals of land out of the said 52 decimals of land in the western side to the opposite party No. 2 and he also transferred the rest 26 decimals of land in eastern part of the said plot in suit in favour of the opposite party Nos. 1 and 3

herein in equal share by way of registered deed of sale dated May 28, 1980. He delivered possession of the said land in favour of the vendees. Thereafter, the opposite party Nos. 1 & 3 amicably partitioned their respective portion and they are in exclusive possession of their lands. Then, the opposite party No. 3 transferred his portion of the said land in favour of the Petitioner by way of three registered deeds of sale and gave up possession thereof in favour of the Plaintiff. The Plaintiff has mutated his name accordingly. The L.R. record has been prepared in his name under Plot No. 422/628. The opposite party who is in possession of the eastern side of the plot in suit, tried to grab the land in suit of the Plaintiff and for that reason, the Plaintiff has filed the instant suit.

3. On the other hand, the opposite party No. 1 filed a title suit being Title Suit No. 3 of 1994 against the opposite party No. 3 herein before the learned Civil Judge (Junior Division), Haldia for specific performance of contract for sale and permanent injunction in respect of the plot which has been purchased by the Petitioner on the pretext that the opposite party No. 3 executed an agreement for sale of the land in suit so held accordingly and an amount of Rs. 13,000/- was taken as an advance on October 18, 1992. Thus, two suits are pending over the selfsame property. The Title Suit No. 3 of 1994 was dismissed for default on July 2, 2004. The opposite party No. 1 did not take any step under Order 9 but filed an application u/s 151 of the CPC for restoration of the said suit on December 10, 2004 and the said suit was restored subsequently by disposal of the said application u/s 151 of the Code of Civil Procedure

4. Challenging that order of restoration, the Petitioner filed an application under Article 227 of the Constitution of India being C.O. No. 2367 of 2007 and the said civil revision case is still pending. Thereafter, the opposite party No. 1 filed an application before the learned Trial Judge on May 14, 2007 in the Title Suit No. 235 of 1993 praying for analogous hearing of the said suit along with the Title Suit No. 3 of 1994 and that application was allowed by the learned Trial Judge. Being aggrieved by that order, this application has been preferred.

5. Now, the question is whether the impugned order should be sustained.

6. Upon hearing the learned Counsel for the Petitioner and on going through the materials on record, I find that that the opposite parties are not coming to challenge the above facts. Therefore, it appears that the two suits being Title Suit No. 235 of 1993 and Title Suit No. 3 of 1994 are pending over the selfsame plot in suit. In the Title Suit No. 235 of 1993, the Plaintiff has prayed for declaration of title and permanent injunction. While in the other suit, that is, the Title Suit No. 3 of 1994, the opposite party No. 1 has claimed for a decree for specific performance of contract and other consequent reliefs. In the Title Suit No. 235 of 1993, there are two parties, that is, the Plaintiff and the opposite party No. 1 herein. But in the other suit, that is, Title Suit No. 3 of 1994, there are three parties and in that suit the Plaintiff of that suit (opposite party No. 1 of this suit) has filed the said suit against the Plaintiff of the Title Suit No. 235 of 1993 and one Bhismadeb Kalsa (the opposite party No. 3 herein). Now the

Bhismadeb Kalsa is not a party in the Title Suit No. 235 of 1993 from whom, the Plaintiff of the Title Suit No. 235 of 1993 had purchased the land in suit.

7. During the course of argument, it has been submitted that the other Title Suit No. 3 of 1994 has now been restored by an order dated March 15, 2010 in the C.O. No. 2367 of 2007. So, at present two suits are pending over the selfsame land but the parties of the two suits are not almost similar.

8. So far as the issues framed in the Title Suit No. 3 of 1994 amongst others, the following two issues are very important for decision:

a. Was there any agreement for sale of the suit property between the Plaintiff and the Defendant No. 1.

b. Is the Defendant No. 2 has bona fide purchaser for value without notice of the alleged agreement.

9. Therefore, from the above two issues, it is very much clear that if these two issues are answered, the adjudication of the other suit, that is, Title Suit No. 235 of 1993 will be automatically decided. Alternatively, it could well be established that if those two issues are answered affirmatively in favour of the Plaintiff of that suit, the Title Suit No. 235 of 1993 would automatically fail and vice versa. Therefore, issues of the two suits are very much important for adjudication and if the two suits are disposed of analogously, I am of the view that there is no chance of confusion or contradictory judgments in the two suits. Therefore, I am of the opinion that the learned Trial Judge is perfectly justified in passing orders for analogous trial of the two suits for effective adjudication amongst the parties. Therefore, there is nothing to interfere with the impugned order. The revisional application fails to succeed. It is, therefore, dismissed.

10. Since the two suits are old and issues have been framed in the two suits, there is no bar to take up the trial of the two suits. The Title Suit No. 235 of 1993 has already been fixed for peremptory hearing. If any intermediate steps are required in respect of the other suit, namely, Title Suit No. 3 of 1994, the parties of that suit may take intermediate steps, if any, within one month from the date of communication. Thereafter, the learned Trial Judge shall proceed with the two suits analogously as per order dated February 14, 2008 passed by the learned Trial Judge.

11. The learned Trial Judge shall dispose of the two suits within six months from the date of the first peremptory hearing as to be fixed by him.

12. This application is, therefore, dismissed in the manner indicated above.

13. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.