

(2012) 10 CAL CK 0115
In the Calcutta High Court
Case No : C.O. No. 1487 of 2012

Sahabuddin Khan

APPELLANT

Vs

Sri Sri Yatra Siddhi Dharma Thakur and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Trusts Act, 1882 — Section 34

Citation : (2012) 10 CAL CK 0115

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Biswajit Basu and Mr. Atanu Biswas, for the Appellant; Gopal Chandra Ghosh for the opposite party No. 1 and Mr. Kaushik Chatterjee for the opposite party Nos. 2 to 22, for the Respondent

Judgement

Prasenjit Mandal, J.—This application is directed against the judgment and order of affirmance dated February 15, 2012 passed by the learned Additional District Judge, Arambagh, Hooghly in Misc. Appeal No. 5 of 2011 arising out of the Order No. 15 dated July 8, 2011 passed by the learned Civil Judge (Junior Division), 2nd Court, Arambagh in Title Suit No. 27 of 2011. The plaintiff/opposite party herein instituted a suit being Title Suit No. 27 of 2011 for declaration, permanent injunction and other reliefs against the defendant/petitioner herein and other shebait, i.e., the defendant No. s 2 to 22. In that suit, the plaintiff filed an application for temporary injunction and that prayer for temporary injunction was granted against the defendant No. 1 restraining him from changing the nature and character of the suit property, or making any construction over the suit property or from transferring the suit property to any third person till the final disposal of the suit.

2. Being aggrieved, the defendant No. 1 preferred a Misc. Appeal being Misc. Appeal No. 5 of 2011 and by the impugned order, the learned Appellate Court dismissed the appeal on contests thereby confirming the order passed by the learned Trial Judge on the injunction matter.

3. Being aggrieved, this application has been preferred.
4. Now, the question is whether the impugned order should be sustained.
5. Upon hearing the Learned Counsel for the parties and on going through the materials-on-record, I find that defendant No. s 2 to 22 filed a Misc. Case u/s 34 of the Indian Trusts Act before the learned District Judge, Hooghly praying for permission to sell the suit property to the defendant No. 1 for the maintenance, repairing works, etc, of the deity. That prayer was granted permitting the shebait to repair the properties of the deity after obtaining the consideration money by sale of the suit property as described in the schedule to the plaint. Sale was done accordingly in favour of the defendant No. 1.
6. Subsequently, it transpired that the plaintiff/opposite party herein is also a shebait of the deity and at the time of permission or sale, no consent was obtained from her and so, the plaintiff has challenged the said Sale Deed.
7. While dealing with the injunction matter, I find that both the Courts below have considered the golden principles of granting injunction such as prima facie case, irreparable injury and balance of convenience and inconvenience. The learned Trial Judge has observed that the transferee is at liberty to proceed in respect of the shares of the defendant No. s 2 to 22, but, the defendant No. 1 did not acquire any right, title and interest in respect of the share inherited by the plaintiff.
8. Accordingly, the learned Trial Judge has observed that irreparable injury will be to the plaintiff if injunction is not granted in his favour. Since, the Deed of Sale is under challenge and declaration has been sought for, if the property is encumbered or transferred in the meantime, it is the plaintiff who may suffer the irreparable loss.
9. The learned Trial Judge has also observed that all the ingredients for granting temporary injunction against the defendant No. 1 has been satisfied by the shebait of the plaintiff deity and therefore, the prayer for temporary injunction should be allowed.
10. Mr. Biswajit Basu, learned Advocate appearing for the petitioner, has referred to the decision of Dalpat Kumar and Another Vs. Prahlad Singh and Others, and thus, he has submitted that the basic principles relating to grant of injunction must be considered. Beside that, in a suit seeking to set aside a decree, the Court can grant injunction when the suit is based on the ground of fraud or want of Court's jurisdiction- while granting injunction in such cases, Court should cautiously look to the conduct of the party, probably injuries to either party and whether plaintiff could be adequately compensated if injunction is refused.
11. Thus, Mr. Basu has submitted that Courts below were not justified in refusing the prayer for injunction.
12. This decision, I find, is on the general principles relating to grant of

injunction particularly when the challenge is to the transfer of property by some of the shebait, but, not by all. In the instant case, the so-called transfer having not signed by all the shebait, the plaintiff has filed the said suit for declaration of the sale deed being void.

13. Mr. Gopal Chandra Ghosh, learned Advocate appearing for the opposite party No. 1, has referred to the decision of Profulla Chorone Requitte and Others Vs. Satya Chorone Requitte, and thus, he has submitted that the position of a shebait is akin to that of a trustee; yet, he is not precisely in the position of a trustee in the English sense, because under the Hindu Law, property absolutely dedicated to an idol, vests in the idol and not in the shebait.

14. Thus, he has submitted that the plaintiff has shown prima facie case to proceed with the suit.

15. Both the Courts below have held that if injunction as prayed for is not granted, the plaintiff would suffer irreparable loss.

16. Thus, the concurrent findings arrived at between the parties based on materials, in my view, should not be interfered with in exercising the revisional jurisdiction.

17. Accordingly, I am of the view that the impugned order should not be interfered with.

18. However, since there is an urgency in the early disposal of the suit, I am of the view that the learned Trial Judge shall be directed to dispose of the said suit within six months from the first date of fixing the peremptory hearing of the suit.

19. This application is disposed of with such observations.

20. 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.