

Gautam Ray Vs. Devendra Bajoria and ors.

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Court : Kolkata

Decided On : Jan-25-2012

Judge : I. P. Mukerji

Appellant : Gautam Ray

Respondent : Devendra Bajoria and ors.

Judgement :

GA No.102 of 2010 With CS No.129C of 1996 IN THE HIGH COURT AT CALCUTTA ORDINARY ORIGINAL CIVIL JURISDICTION ORIGINAL SIDE In the matter of: Gautam Ray Versus Devendra Bajoria & ORS.Before: The Honble Justice I.P.MUKERJ.Date:

25. 01.2012 Appearance: Ms.Mousumi Bhattacharjee, Adv.led by Mr.Anindya Mitra Sr.Adv.With Ms.Neelima Chatterjee, Adv., Ms.Aindrila Chakraborty, Adv.Mr.Ajoy Krishna Chatterjee Sr.Adv.Mr.Biswanath Chatterjee, Adv.Mr.Bhaskar Mitra, Adv.The Court: This is an application by the third defendant for dismissal of the suit.

It is argued by Ms.Bhattacharjee that the second defendant was a borrower to whom the fiRs.defendant had lent and advanced sums of money.

The property in question at Alipur was given as security for such loan.

The second defendant could not repay the loan.

In those circumstances, the fiRs.defendant enforced the security.

The fiRs.defendant is the shareholder and director of the third defendant.

The property has been purchased by this defendant.

According to Mr.A.K.Chatterjee learned Senior Advocate this property was sold for a paltry sum of about Rs.4 lakhs.

For this reason the plaintiff being a person interested in the property has filed the above suit for recovery of this property.

The transaction was of 1979.

The sum became payable to the fiRs.defendant by virtue of a consent decree passed by this Court in 1980.

It is alleged by Mr.Chatterjee that the decree was collusive.

Ms.Bhattacharjee urges three main grounds for dismissal of the suit.

The fiRs.is that limitation has long set in.

The second is that the plaintiff is indulging in abuse of the process of law in instituting and prosecuting this litigation.

The third is that the plaintiff is guilty of suppression of material facts.

I do not think that on an examination of the plaint any of these grounds are apparent so as to warrant dismissal of the suit.

Evidence is called for.

I am of the opinion that abuse of the process of Court or suppression of facts cannot be tried as preliminary issues.

The court usually comes to findings regarding these points at the end of the trial.

But in the facts and circumstances of the case the Honble Judge taking up suits may consider framing the issue of limitation as a preliminary issue.

Any issue ancillary to the above issue may also be framed if it is so commends to his Lordship.

Cross order for discovery to be made by 15th February, 2012.

Inspection forthwith.

The suit may be mentioned before the Honble Judge taking suits thereafter.

This application is disposed of with the above observations.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I.P.MUKERJI, J.) SP/

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