

Subimal Chakraborty. Vs. Surjya Kumar Maity and ors.

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Court : Kolkata Appellate

Decided On : Jan-07-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 2403 of 2007

Appellant : Subimal Chakraborty.

Respondent : Surjya Kumar Maity and ors.

Advocate for Def. : Mr. Amitava Das,; Mr. Pingal Bhattacharyya, Advs

Advocate for Pet/Ap. : Mr. Probal Kumar Mukherjee,; Mr. Sk. Akhtar Hossain, Advs

Judgement :

1. This application is at the instance of the petitioner and is directed against the order no.40 dated May 31, 2007 passed by the learned Civil Judge (Junior Division), Third Court, Tamluk in Misc. Case No.3 of 2004 arising out the judgment and ex parte decree by order no.172 dated November 24, 2003 passed by the learned Civil Judge (Junior Division), Third Court, Tamluk in Title Suit No.22 of 1981.

2. The petitioner instituted the Title Suit being T. S. No.22 of 1981 against the defendants/opposite party nos.5 to 9 for declaration and recovery of possession and also for injunction. In that suit, the defendants/opposite party nos.5 to 9 appeared and the defendant nos.6 and 7 contested the said suit by filing their

respect written statements denying the contentions made out in the plaint. The defendants did not take any steps subsequently. As a result, the suit was decreed ex parte on November 24, 2003. While the petitioner was in possession, on December 7, 2003, the defendant nos.1 to 4 tried to start the construction works on the suit property and the petitioner raised objection. The defendant nos.1 to 4 contended that they had purchased the suit property from Smt. Bharti Banerjee, wife of Sri Ashok Kr. Banerjee, the defendant no.7. Then, the petitioner had no other alternative but to file a title suit being T. S. No.104 of 2003 praying for decree of confirmation of title, recovery of possession and other reliefs. The opposite party nos.1 to 4 entered appearance and contested the said suit by filing a written statement and thereafter, they filed an application for setting aside the ex parte decree passed in T.S. No.22 of 1981. That application under Order 9 Rule 13 of the C.P.C. filed by the opposite party nos.1 to 4 were allowed by the impugned order. Being aggrieved, this application has been preferred.

3. Now, the point for consideration is whether the impugned order should be sustained.

4. Upon hearing the submission of the learned counsel for the parties and on going through the written arguments filed by the parties as well as the materials on record, I find that the defendants/ opposite party nos.1 to 4 have specifically stated that they have no knowledge with regard to the earlier suit passed ex parte. AT the time of sale of the land in their favour, the vendor did not disclose that an ex parte decree had been passed earlier against the vendor and others. For non-disclosure of such fact, the learned Trial Judge has held that this was a sufficient ground for setting aside an ex parte decree. Though the stranger purchasers were not parties to that suit, since they had acquired right, title and interest by way of purchase without notice of the earlier suit, they have the right to file an application for setting aside the ex parte decree and that matter has been clearly decided by an earlier order dated July 8, 2005 in Civil Revision No.515 of 2005, as appearing in page no.70 of the application. The property was purchased during the pendency of the earlier suit being Title Suit No.22 of 1981. The learned Trial Judge has come to a finding that the petitioners of the misc. case have been able to show sufficient cause for delay in filing the application under Order 9 Rule 13 of the C.P.C. and as

such, he allowed the application under Order 9 Rule 13 of the C.P.C. after condoning the delay. Since her findings are based on evidence on record and such findings are not perverse, I am of the view that this revisional Court is not in a position to analyze the evidence in details. Though misc. appeal lies, the petitioner did not prefer to file any misc. appeal.

5. This being the position, I am of the view that there is nothing to interfere with the impugned order. Accordingly, this applications fails to succeed.

6. It is, therefore, dismissed.

7. Considering the circumstances, there will be no order as to costs.

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

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