

In the Court of District Judge, South 24-Parganas

Misc.Appeal 393 of 2023 (R-393)

(GNR No.WBSP01-015402-2023)

Present : Sri K.K. Agarwal (WB01429) District Judge-in-charge,

South 24 Parganas at Alipore

Sri Soumitra Ghosh Appellant

Vs

Sk. Idris AliRespondent

Order No.01 dated 19.10.2023

Ld.lawyer for the appellant files a leave petition along with a downloaded copy of the order dated 18.10.2023 passed by the ld.Civil Judge (Sr.Division),3rd Court at Alipore in Title Suit No.1432/2023 to tile the instant Misc.Appeal.

Perused the leave petition along with a downloaded copy of the order dated 18.10.2023 passed by the Ld.Civil Judge (Sr.Divn.) , 3rd Court, Alipore in T.S.1432/2023 to file the instant Misc.Appeal.

The prayer is considered and allowed.

Accordingly, the appellant is permitted to file the instant Misc.Appeal.

The instant Misc.Appeal u/o 43 rule 1(r) read with section 151 of CPC is at the instance of the appellant against the respondent to impeach the order dated 18.10.2023 passed by the ld.Civil Judge (Sr.Divn.) , 3rd Court at Alipore in T.S.1432/2023 to file the instant Misc.Appeal.

Court fees paid is correct.

Register.

Appeal is filed within the period of limitation as per downloaded copy.

Requisite has been filed.

At this stage, the appellant files an application u/o 39 rule 1 & 2 read with section 151 CPC for injunction.

As the appeal is filed within period of limitation. The same is admitted.

Ld. lawyer for the appellant prays for injunction hearing and considering the office report, it is seen that there is no caveat and as such, the injunction petition is taken up for hearing.

Ld. lawyer for the appellant submits that the impugned order is not sustainable as the Ld.Trial Court failed to appreciate the case of the appellant.

It is submitted that the appellant sold the suit property to the respondent by a registered Deed of Conveyance. But the cheque consideration amount of Rs.3,89,100/- has not been paid or encashed and as such, he said registered document thus cannot sustain in the eye of law to that effect , the appellant has filed a suit for cancellation of the said Deed. It

(contd.....order no.01 dt.19.10.2023 in Misc.Appeal No.393 of 2023)

is submitted even though the registration has been done , but the appellant is in possession and submits that if required, the appellant is ready and willing to refund back Rs.2,00,000/- in terms of the Deed. As such, he prayed for necessary order for injunction.

Heard ld.lawyer for the appellant. Perused the order and the injunction petition.

Considered the submissions and perused the impugned order including the annexed documents with the injunction petition and at page 31 being the annexures, it is seen that the appellant is still in possession of the suit property and the appellant has approached the police authority and made complaint from which it is seen that the appeal has been able to make out a prima facie case which is the subject to trial and the interest of the appellant needs to be protected. Accordingly, the prayer for ad interim injunction as sought for is allowed.

Hence, it is,

ORDERED

that the prayer for an order of ad-interim injunction is allowed in favour of the appellant till 07.12.2023.

The respondent including their men, agents and associates, is, hereby, restrained from creating any third party interest in respect of the suit property till 07.12.2023.

The appellant is directed to comply with the provisions as enumerated under Order 39 Rule 3(a) and (b) of the C.P.C.

Issue notice.

Fix 07.12.2023 for S/R and A/D.

Dictated and corrected by me
Sd/-K.K. Agarwal
District Judge (i/c)

Sd/-K.K.Agarwal
District Judge (i/c)
(WB01429)