

CASE NO.:  
Appeal (civil) .3328 of 1997

PETITIONER:  
Sangeeta Chowdhury

RESPONDENT:  
Commissioner, Sanchaita Investments & Ors.

DATE OF JUDGMENT: 06/01/2004

BENCH:  
BRIJESH KUMAR & ARUN KUMAR

JUDGMENT:  
JUDGMENT

ARUN KUMAR, J.

The grievance of the appellant in the present appeal is that she has been deprived of her valuable immovable property located at Premises No.662/B, Tollygunge Circular Road, Block 'O', New Alipore, Calcutta - 700 053 without even being afforded an opportunity of being heard. The appellant had purchased the said property vide a registered conveyance deed dated 28.11.1969 executed in her favour by one Pritam Singh. According to the appellant after its purchase she got building plans approved from the Calcutta Municipal Corporation for construction of three-storeyed building. The appellant Sangeeta Chowdhury entered into an agreement to sell the said property with one Raja Mallo on 29.7.1980. There is no dispute between the parties about an agreement to sell having been executed by Sangeeta Chowdhury in favour of Raja Mallo. The dispute, however, is that according to the appellant, the agreement was for a consideration of Rupees Five lacs out of which Rupees one lac was received by her from Raja Mallo by way of earnest money while according to the respondents, the agreement was for a sum of Rs.one lac and the entire consideration was paid by Raja Mallo to Sangeeta Chowdhury. Neither party has produced the original agreement on record. According to Sangeeta Chowdhury after paying Rs.one lac as earnest money in pursuance of the said agreement Raja Mallo disappeared and did not perform the rest of the agreement. She forfeited the earnest money and she continues to be the owner of the property. According to the respondent Raja Mallo paid the entire consideration of Rs.one lac in pursuance of the agreement to Sangeeta Chowdhury and he further entered into a construction agreement with one Biswajeet Ghosh on 27.2.1987.

There was a firm Sanchaita Investments which had accepted large number of deposits from small depositors and had purportedly defrauded them. Investigation into the affairs of the said firm had been going on since long and by virtue of orders passed by this Court a Court Commissioner had been appointed. On 27.9.1983 this Court had passed an order authorising the Commissioner of Sanchaita Investments to attach such assets and properties which prima facie in his opinion were owned by the firm Sanchaita Investments or any of its partners. The Commissioner was further authorised to put to sale such assets and properties if no objections were received to attachment thereof within one month of the date of attachment. The Commissioner Sanchaita Investments attached the property of the appellant on 3rd January, 1989 and invited objections to the attachment. Two sets of objections were filed (1) by Biswajeet Ghosh (filed in February, 1989) and (2) by Tarun Kanti Chowdhury on behalf of Sangeeta Chowdhury (filed in January, 1991).

These objections were referred by the Commissioner to the High Court for purposes of consideration and disposal. The High court vide its order dated 24.4.1991 disposed of the two sets of objections. The objections filed on behalf of present appellant Sangeeta Chowdhury were rejected on the ground that the Vakalatnama filed in support of the objection was found to be defective, however, liberty was given to the counsel to file a proper vakalatnama within ten days. Strangely the order records in this behalf that "in the event such vakalatnama is filed the objections will be governed by the order which we would hereinafter pass. In default the objection of Tarun Kanti Chowdhury will be deemed to have been dismissed for absence of proper authority of his learned Advocate-on-Record". The order passed by the Court thereafter was that Biswajeet Ghosh, the other objector offered to deposit a sum of Rs.4,50,000/-(Rupees Four Lacs Fifty Thousand only) with the Commissioner, Sanchaita Investments as a condition precedent for lifting the attachment. Therefore, the Court observed that if the said amount was deposited the attachment would stand vacated. The Court specifically observed that it had not gone into the question of title to the property in view of the offer of Biswajeet Ghosh to deposit a sum of Rs.4,50,000/-(Rupees Four Lacs Fifty Thousand only) and the question of title to property remained open. With these observations both sets of objections stood disposed of.

From the above order it follows that the objections of appellant Sangeeta Chowdhury to attachment of her property by the Commissioner, Sanchaita Investments were never considered and decided on merits. If proper vakalatnama was not filed the objections were to be treated as dismissed on the ground of being filed without authority and if a proper vakalatnama was filed, her objections would still stand disposed of on the basis of offer of deposit of Rs.4,50,000/-(Rupees Four Lacs Fifty Thousand only) by Biswajeet Ghosh. The question of title to property was left open. Sanchaita Investments got a sum of Rs.4,50,000/-(Rupees Four Lacs Fifty Thousand only), the sum deposited by Biswajeet Ghosh as a condition for lifting of attachment of the property. It appears that thereafter Biswajeet Ghosh moved an application asserting his title to the property before the Bench of the Calcutta High Court dealing with matters relating to Sanchaita Investments. The said application was disposed of without notice to the appellant by an order dated 26th July, 1991 passed by the Division Bench of the High Court. The said order records that since Tarun Kanti Chowdhury failed to prove how he was empowered to file objection on behalf of Sangeeta Chowdhury, the objections stood rejected. This is factually incorrect as a fresh Vakalatnama was filed within ten days as permitted by the Court. It was also noted that the property in question stood released from attachment. Biswajeet Ghosh was free to assert his legal right and title to the property. The Bench made it specifically clear that it had not adjudicated upon the question of title to the property and that matter was left to be decided.

Biswajeet Ghosh thereafter filed a suit for specific performance of the agreement which he had with Raja Mallo with respect to the suit property. In the said suit he impleaded Sangeeta Chowdhury and Raja Mallo and did not implead Sanchaita Investment as a defendant. In his ex-parte evidence it appears that Ghosh took a contradictory stand saying that Sangeeta Chowdhury was only a benamidar with respect to the suit property for Sanchaita Investments. Further according to him the agreement between Sangeeta Chowdhury and Raja Mallo was not performed and that is why he had impleaded both of them as parties to the suit requiring them to execute a sale deed with respect to suit property in his favour. The said suit was dismissed on 8th June, 1992. The Court observed in the said order that when Sangeeta Chowdhury was said to be a benamidar for Sanchaita Investments, Sanchaita Investments should have been impleaded as a party and a declaration ought to have been sought to the effect that Sangeeta Chowdhury was only a

benamidar for Sanchaita Investments. Further if the property according to Ghosh really belonged to Sanchaita Investments, the sale deed, if at all, had to be executed by Sanchaita Investments and without making it as a party to the suit such a relief could not have been granted. The Court also observed that payment of entire consideration money to Sangeeta Chowdhury by Raja Mallo in pursuance of the agreement of sale between the two was never established by the plaintiff. Further Raja Mallo being simply an agreement-holder got no title to the property from Sangeeta Chowdhury. This order of dismissal of suit by Biswajeet Ghosh was never challenged by way of appeal and, therefore, had become final.

On 15th June, 1993 Biswajeet Ghosh moved an application before the Sanchaita Bench of the Calcutta High Court making a prayer that the Commissioner of Sanchaita investments be directed to execute a deed of conveyance with respect to the suit property in his favour. On 7th July, 1993, the High Court without giving any notice to the appellant Sangeeta Chowdhury passed an order directing the Commissioner of Sanchaita Investments to execute a Conveyance Deed with respect to the suit property in favour of Biswajeet Ghosh. In pursuance of the said order a Deed of Conveyance was executed by the Commissioner in favour of M/s. Veekayan Properties, a nominee of Biswajeet Ghosh on 22nd July, 1993. Sangeeta Chowdhury moved an application on 10th December, 1993 for recall of the order dated 7th July, 1993. The said application of Sangeeta Chowdhury was dismissed by the Division Bench of the Calcutta High Court on 20th September, 1996. The present appeal is directed against the said order of the High Court.

We have heard learned counsel for the parties at length. The entire thrust of the arguments on behalf of appellant is that she has been condemned unheard. Her objections to attachment of her property were dismissed on technical grounds without going into merits. With the dismissal of the objections the property has been assumed to be belonging to Sanchaita Investments. Although the matter has been before the High Court on several occasions, the question of title to the property was never gone into in spite of the High Court observing on various occasions that the question of title of the property will be considered independently. The learned counsel appearing for the respondents have tried to meet this argument by stating that the objections filed on behalf of appellant Sangeeta Chowdhury stood decided on merits by virtue of the various orders passed by the Special Bench of the Calcutta High Court. In support of this argument, we have been taken through various orders. Unfortunately, we are unable to find from these orders that the objections filed on behalf of Sangeeta Chowdhury were ever considered on merits by the High Court at any stage. The very first order dated 24th April, 1991, by which appellant's objections to attachment of her property were rejected shows that the objections were not considered on merits. They were rejected on account of non production of a proper Vakalatnama in support of the objections by the Advocate-on-record. Time to produce a proper Vakalatnama was granted and another Vakalatnama was filed within the time allowed. Even then as per the said order the objections were to stand rejected in view of acceptance by the Court the offer of Biswajeet Ghosh to deposit Rs.4.50 lakhs against vacation of the order of attachment with respect to the property in question. Thus in either case, the objections filed on behalf of Sangeeta Chowdhury stood rejected without being considered on merits. The subsequent order of the High Court dated 26th July, 1991, again notes the fact of rejection of objections filed on behalf of Sangeeta Chowdhury. The rejection of the objections is reaffirmed. The same is the position which emerges from the final order of the High Court dated 20th September, 1996 which is subject-matter of the present appeal. Therefore, the fact remains that the objection of the appellant against

attachment of her valuable property were never considered on merits.

From a careful consideration of impugned judgment in the light of facts on record, the following points emerge:  
The fact that Sangeeta Chowdhury had a valid title to the property in the first instance is not in dispute. It is admitted that she had purchased the property vide a Registered Deed of Conveyance dated 28th November, 1969 from one Pritam Singh. Again it is not in dispute that she entered into an agreement to sell with respect to the said property with one Raja Mallo. According to appellant-Sangeeta Chowdhury the consideration under the agreement to sell was Rupees Five Lakhs out of which she was received Rupees one lac as earnest money from Raja Mallo whereas according to respondents the consideration under the agreement was Rupees one lac and the entire amount was paid by Raja Mallo to Sangeeta Chowdhury and she gave possession of the property to Raja Mallo. Sangeeta Chowdhury denies having handed over possession of the property to Raja Mallo. Neither party has produced the original agreement to sell on record. During the course of hearing before this Court, both sides asserted that they were in possession of their version of the original agreement. Which agreement is correct and genuine can be decided only on the basis of evidence which may be produced by respective parties. We have no basis to uphold or reject either of the agreements set up by the parties. According to Sangeeta Chowdhury, Raja Mallo failed to perform the agreement as he did not pay the balance consideration and he is actually said to have disappeared after the initial agreement. However, according to respondents, Raja Mallo became owner of the property in question on execution of the agreement of sale on payment of the consideration of Rupees one lac under the agreement. The alleged agreement of sell is said to be dated 29th July, 1980. Raja Mallo is said to have entered into a construction agreement with one Biswajeet Ghosh on 27th February, 1981 under which Ghosh had to construct a building on the plot in question. On the basis of the construction agreement, Ghosh started asserting his title to the property in which attempt he finally succeeded in getting a Deed of Conveyance executed with respect to the property in favour of his nominee in pursuance of order dated 7th July, 1993 passed by the High Court. The Deed of Conveyance was executed by the Commissioner of Sanchaita Investments. Thus without deciding as to how and in what manner the title to the property in question travelled to Sanchaita Investments, the Deed of Conveyance was allowed to be executed. No attempt was ever made by the High Court to ascertain as to whether Sanchaita Investments had any title to the property before it could be called upon to execute a Conveyance Deed with respect to the property in favour of Biswajeet Ghosh or his nominee.

In our considered view the impugned judgment of the High Court is liable to be set aside for the following additional reasons :

(1) The High Court has proceeded on the basis that the agreement to sell between Sangeeta Choudhury and Raja Mallo was for a consideration of Rs.1 lac only and the amount stood paid to Sangeeta Choudhury. The High Court has failed to notice the case set up by Sangeeta Choudhury in this behalf that the consideration under the agreement was Rs. 5 lakhs out of which Rs.1 lac was paid as earnest money. Neither party had produced the original agreement on record. Therefore, the High Court had no basis to accept that the agreement was for a total consideration of Rs.1 lac only thereby ignoring the stand of Sangeeta Chowdhury altogether. Whether the agreement to sell was for total consideration of Rs.1 lac or Rs. 5 lacs is a question which goes to the root of the matter because admittedly Sangeeta Chowdhury received Rs.1 lac in pursuance of the

agreement. If the total consideration under the agreement was Rupees one lac, she received the entire consideration. If it was Rupees five lakhs, she only received Rupees one lac and balance amount was never paid to her. Further the case of Sangeeta Chowdhury is that the agreement was abandoned and Rs.1 lac which was paid by way of earnest money was forfeited. In our view the High Court could not ignore the stand of Sangeeta Chowdhury. It had to consider the stand of both parties and thereafter form a view about the correctness of either party's stand.

(2) Similarly, the High Court was wrong in accepting that Sangeeta Chowdhury had delivered possession of the property to Raja Mallo in pursuance of the agreement to sell. The parties were at variance on the question of delivery of possession of the property and the issue could be resolved only after due consideration of the material on record in this behalf, which was not done by the High Court.

(3) The Commissioner Sanchaita Investments attached the suit property and issued an advertisement on 3rd January, 1989 inviting objections to attachment. The order of this court dated 27th September, 1983 which authorized the Commissioner to attach properties which in his prima facie opinion were in the ownership of the firm Sanchaita Investments, does not leave the matter to mere ipsi dixit of the Commissioner. The fact that the Commissioner had to form a prima facie opinion before attaching the property shows that the Commissioner had to have some basis before he could attach a property. In the present case, the learned counsel appearing for the respondents have not been able to point out to us anything to show that the Commissioner formed a prima facie opinion in this behalf. The High Court made no effort to find out whether there was any prima facie satisfaction on the part of the Commissioner, Sanchaita Investments before ordering attachment of the property in question. The question of attachment of the property goes to the root of the matter. If the attachment was without any basis all subsequent acts qua the property fall through. The casual approach of the High Court in this behalf is evidenced by the following observations contained in the impugned judgment:

" Now in this case, we have seen that the property was attached by the Commissioner of Sanchaita Investments, obviously prima facie holding that it belonged to Sanchaita Investments."

Thus on the basis of "obviously", the real question has been side tracked.

4. The objections to attachment of the property filed by Tarun Kanti Chowdhury on behalf of Sangeeta Chowdhury were rejected on two grounds: first, Tarun Kanti Chowdhury had no authority to file the objections on behalf of Sangeeta Chowdhury; and secondly, there was no proper Power of Attorney executed in favour of the Advocate who filed the objections in court. The High Court in its impugned judgment has proceeded on the basis that both these aspects remained unsatisfied and therefore the objections filed on behalf of Sangeeta Chowdhury were rightly rejected without being considered on merits. However, record shows that both the grounds for rejection of the objections were met by Tarun Kanti Chowdhury and therefore the grounds were not available. Tarun Kanti Chowdhury was given opportunity to show the authority in his favour to file the objections which he did as recorded in the order dated 28th August, 1996 of the High Court.

Likewise, a fresh Power to Attorney was filed on record within the period of ten days allowed for that purpose by the High Court. Therefore, rejection of the objections of Sangeeta Chowdhury to attachment of property on these two grounds was uncalled for and contrary to record. The High Court in its impugned order has proceeded on a totally incorrect basis that Tarun Kanti Chowdhury failed to meet these two grounds and therefore the objections were rightly rejected.

The High Court had been observing in its various orders that the question of title to the property was to be independently gone into but the same was side tracked in the above manner.

5. The impugned order shows that the Special Bench of the High Court was looking after the affairs of Sanchaita Investments and was really concerned with securing money in order to meet the demands of the depositors. Therefore, the Bench was impressed by the fact that Biswajeet Ghosh had offered to deposit Rs.4.5 lacs with the commission, Sanchaita Investments which really led the Bench to give the property to Biswajeet Ghosh or his nominee by way of a Conveyance Deed without considering the basic question as to whether Sanchaita Investments had title to the property before it could pass the title to a third party. If Sanchaita Investments had no title to the property how could Biswajeet Ghosh or his nominee could get a good title to the property?

6. The High Court failed to appreciate the weight of reasoning contained in the order dated 8th June, 1992 passed by the learned Assistant District Judge while dismissing the title suit filed by Biswajeet Ghosh to claim title to the property. Biswajeet Ghosh had filed a suit in January, 1992 seeking specific performance of the agreement in his favour in which he impleaded Sangeeta Chowdhury and Raja Mallo as defendants. The suit was dismissed and the order of dismissal became final because it was not carried further by way of appeal. One of the reasons for dismissal of the suit by the High Court is the contradictory stand of Biswajeet Ghosh with respect to facts leading to his claim to title to the property. In his ex parte evidence in the said suit he had stated that Sanchaita Investments was the real owner of the property and Sangeeta Chowdhury was a mere benamidar. Another instance of contradictory stand of Biswajeet Ghosh in this connection emerges from the objections filed by him against attachment of property by the Commissioner, Sanchaita Investments. There he stated that Sanchaita Investments had nothing to do with the property and the property could not be attached by the Commissioner.

The above aspects show that the High Court in its impugned judgment has proceeded on wrong assumptions and most important question regarding title to the property was never gone into. Assuming Raja Mallo was an agent of Sanchaita Investments had entered into the agreement to sell with Sangeeta Chowdhury on behalf of the said firm, the title to property could not pass to Sanchaita Investments merely on basis of an agreement to sell. Title to immovable property of such value can pass only on the basis of a registered Deed of Conveyance. What right Sanchaita Investments had to further sell the property? These questions needed to be considered before Deed of Conveyance could be ordered to be executed. The objections to attachment of property filed on behalf of Sangeeta Chowdhury were rejected on technical grounds and were never considered on merits. Keeping all these aspects in view, we are of the opinion that the impugned judgment

of the High Court dated 20th September, 1996 cannot be sustained. We accordingly set aside the same and remand the matter back to the High Court for consideration of the objections filed on behalf of Sangeeta Chowdhury on merits. Any observation contained in this judgment shall not influence the High Court in arriving at its own independent conclusion.

This appeal is allowed leaving the parties to bear their respective costs.

JUDIS