

ORDER SHEET  
GA No. 2570 of 2013  
CS No.65 of 2003  
IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

RAJAT BOSE  
Versus  
SHOMA PATRONOBIS  
alias Chowdhury alias Chatterjee alias Banerjee

BEFORE:  
The Hon'ble JUSTICE DEBANGSU BASAK

Date : 16th July, 2014.

Appearance:  
Mr. Utpal Majumder, Adv.  
Mr. Sanjoy Bose, Adv.  
Ms. Tannistha Lahiri, Adv.  
For the petitioner.

The Court :- In a suit seeking money decree and declaration and injunction the present application was made. The case of the plaintiff was that the defendant gave an undertaking to this Court in a suit in which the defendant was a party being Suit No. 160 of 1997. The undertaking of the defendant of such suit was as follows:-

6.1. "The said amount of Rs.9,00,000/- has been provided by Mr. Rajat Bose of No. 24B Shakespeare Sarani, Kolkata 700 017 and the defendant hereby undertakes to this Hon'ble Court not to sell transfer alienate, let out or part with the

possession of the said Flat without the written consent of Mr. Rajat Bose”.

The plaintiff claimed that the defendant had sold the property in question in respect of which such undertaking was given to Court, necessitating the plaintiff to approach the Court for reliefs with regard thereto.

The application was moved and diverse interim orders were passed. It was submitted on behalf of the plaintiff that, the defendant contested the present application and that interim orders were passed in presence of the learned Advocate for the defendant. A member of the bar was appointed as Receiver by an order dated September 2, 2013. The learned Receiver made an inventory of the immovable property in question and submitted a report to this Hon'ble Court in terms of the order of the Court. After considering such report the learned Judge was pleased to discharge the Receiver. Since thereafter the defendant was not appearing. The application was taken up by me today on second call. At the time of hearing of the application none appeared for the defendant.

The plaintiff, in the facts and circumstances of the case, prayed that in order to remedy the breach of the undertaking, it was essential that a Receiver be appointed over the property in question with appropriate direction upon the Receiver to take actual physical possession of the flat in question so as to prevent any further transfer and interest in respect of the flat taking place.

Learned Advocate for the plaintiff also drew attention of the Court to the report filed by the Receiver. The report of the Receiver stated that the flat concerned was transferred to one Dr. Manoj Khanna by the defendant.

I have considered the contention made by the plaintiff on the materials on record.

The plaintiff was seeking recovery of a sum of money and the declaration that the petition was bound by the negative covenant in the undertaking given to the Court. The plaintiff was also seeking perpetual injunction on the immovable property in question.

The plaintiff claimed that the property in respect of which the defendant gave an undertaking to this Court was in jeopardy inasmuch as the defendant acting in breach of the undertaking given to Court not to transfer and alienate such flat had in fact done so.

The report of the Receiver established the claim made by the plaintiff that third party interest was created by the defendant in respect of flat in question. Prima facie, it appeared that the defendant had acted in breach of the undertaking given by him to the Court with the creation of third party interest over the flat in question. There were every possibility of further transfer of interest taking place. The third party was not a party to the suit. In such circumstances, in order to protect and preserve the immovable property concerned it was appropriate that a fit and proper person be appointed as Receiver to take actual physical possession thereof.

In such circumstances, Mr. Bibekananda Tripathy, who was appointed as Receiver by the order dated September 2, 2013 will re-visit the suit premises and will take actual physical possession thereof. In the event the Receiver finds any occupant in the flat in question at the time of taking over of possession, the Receiver will inform such occupant as to this order and will request such occupant to make over flat in question to Receiver.

In implementing the order passed for the purpose of taking possession of the flat in question, in the event the Receiver is of the opinion that he requires police help he will approach the local police station for such police help. In the event the learned Receiver approaches such police station for police help the Officer-in-Charge of the concerned police station will provide necessary police assistance to the learned Receiver to implement this order.

GA No. 2570 of 2013 is disposed of accordingly. No order as to costs.

(DEBANGSU BASAK, J.)