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28.07.2021
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**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 1090 of 2019
(Via video conference)

Anil Mandal & Ors.
-Vs.-
Jagabandhu Sutradhar & Ors.

Mr. Avishek Prasad
...for the petitioners

Mr. Kishore Mukherjee
...for the opposite party nos. 1 to 4

Affidavit-of-service filed in Court today be
kept on record.

The present revisional application has been
filed against an order, whereby the
plaintiffs/petitioners' applications for addition of
party, under Order I Rule 10(2) and the
application for consequential amendment of the
plaint, under Order VI Rule 17 of the Code of Civil
Procedure were simultaneously rejected.

Learned counsel appearing for the
petitioners contends that during pendency of the
suit, the proposed added defendants purchased a
portion of the suit property and, as such, are
necessary parties to the suit. The trial court, it is

submitted, erroneously proceeded on the basis of Section 52 of the Transfer of Property Act and rejected the said applications, apparently on the premise that plaintiffs' right is adequately protected.

Learned counsel for the petitioners further submits that a part of the sale, on the strength of which the proposed added defendants are vested with title, was affected prior to the institution of the suit and the rest thereafter.

Learned counsel appearing for the contesting opposite party nos. 1 to 4 categorically opposes such submissions and submits that the trial court acted well within its jurisdiction to rely on Section 52 of the Transfer of Property Act, since the said provision sufficiently protects the interests of *lis pendens* transferees.

It is further contended that, in view of a previous suit having been already decreed between the same parties in respect of the same subject matter, the addition of the proposed defendants will be barred by *res judicata*.

Be that as it may, since the petitioners made out a *prima facie* case of devolution of title on the proposed added defendants partially prior to and the rest subsequent to the filing of the suit, it is

apparent that the proposed added defendants have a direct interest in the outcome of the litigation and, as such, are necessary parties thereto.

It is not for this Court to go into the question of *res judicata* at this primary stage. Of course, it will be open to the defendants/opposite party nos. 1 to 4 to raise such contentions in the suit itself.

Since the amendment application was merely consequential to the application for addition of party, the impugned order rejecting both the applications cannot be sustained.

Accordingly, C.O. No. 1090 of 2019 is allowed, thereby setting aside Order No. 106 dated October 05, 2018, passed by the Civil Judge (Junior Division), First Court at Malda in O.C. No. 13 of 2008 and allowing both the applications, for addition of party and amendment respectively, filed by the plaintiffs/petitioners. The plaintiffs/petitioners shall file their amended plaint accordingly within a fortnight from date before the trial court. Additional written statement, if any, shall be filed within a fortnight thereafter.

In view of long pendency of the matter, the trial court is requested to expedite the hearing of the suit itself as far as its roster permits, but positively decide the same within one year from the date of communication of this order to the court below.

The parties as well as the court below shall act on the written communications of the learned advocates for the parties, accompanied by server copies of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)