S/L. 2.
19.08.2019
MNS

***Calcutta* High Court**
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction

C. O. No. 17 of 2019
With
CAN 1 of 2019
With
CAN 2 of 2019

Dilip Kundu
-Vs.-
Art Reeves Exim (India) Pvt. Ltd. And others

Mr. Sunil Kumar Sarkar

...for the petitioner.

Mr. Bikramayaditya Ghosh,
Ms. Bedashruti Bose,
Mr. Aman Kumar Goutam

...for the opposite party no. 1.

Mr. Arun Kumar Sarkar,
Mr. Abhijit Sarkar

...for the opposite party no. 2.

The present challenge is directed against an order, whereby the petitioner's application for addition of party, in a suit for eviction filed by the opposite party no. 1 against the opposite party no. 2, was dismissed.

The plinth of the said suit was that the opposite party no. 1 (plaintiff in the suit) was the owner of the suit property by virtue of purchase, whereas the opposite party no. 2 was not.

Learned counsel for the petitioner argues that the opposite party no. 2, who is the defendant in the suit, entered into a partnership agreement with the present petitioner, although the resultant partnership firm was an unregistered one. Previously an application was moved by the present petitioner under Section 9 of the Arbitration and Conciliation Act, 1996, which was ultimately withdrawn by the petitioner.

It is submitted on behalf of the petitioner that since the partnership deed and the accompanying general power of attorney created partnership rights of the petitioner in respect of the suit property, the eviction suit could not be completely and effectively adjudicated in the absence of the petitioner.

It is further argued that the opposite parties are colluding between themselves to exclude the petitioner, despite the petitioner having invested huge amounts of money and substantial resources in the property and has developed and has entered into agreements with third parties for transfer in respect of the developed property.

As such, it is argued that the petitioner was a necessary and proper party in the suit and the trial court acted without jurisdiction in refusing to implead the said petitioner.

In support of his contentions, learned counsel for the petitioner cites a judgement reported at ***AIR 1986 Supreme Court 368 (Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujrat)***, for the proposition that the term “transfer of property” connotes the passing of rights in the property from one person to another. In one case there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only, out of all the estates comprising the totality of rights in the property. In the third case, there may be reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other persons. An exclusive interest in property is a larger interest than a share in that property. To the extent to which the exclusive interest is reduced to a shared interest it would seem that there is a transfer of interest. Therefore, it was held that when a partner brings in his personal asset into the capital of the partnership firm as his contribution to its capital, he reduces his exclusive rights in the asset to shared rights in it with the other partners of the firm. While he does not lose his rights in the asset altogether, what he enjoys now is an abridged right which cannot be identified with the fullness of the right which he enjoyed in the asset before it entered the partnership capital.

The said judgment was rendered in connection with an income tax matter, while deciding whether, on a transfer, an assessee, a partner contributing shares of companies to capital of partnership firms, came within the expression “transfer” in terms of Section 45.

Learned counsel next cites a judgment of the Supreme Court dated February 18, 1999 ***(Savita Devi Vs. District Judge, Gorakhpur and others),*** wherein it was held, inter alia, that Order I Rule 10 of the Code of Civil Procedure enables the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code. In the event the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, it was held that the intervener ought to be added.

Such contentions are controverted on behalf of the opposite parties, who submits that the judgments cited are rather in favor of the opposite parties than the petitioner.

A perusal of the partnership deed-in-question shows that merely inchoate rights were created in favour of the present petitioner by the opposite party no. 2 in the said deed, at best creating an interest in the development and further sale of the property to third parties; but no present right, as far as the property was concerned, was created by virtue of the said document.

Despite the submissions on behalf of the petitioner, the general power of attorney could at best be a document supplementing the partnership deed and could not be equated with the deed itself. Although it is submitted on behalf of the opposite party no. 2 that the power of attorney was already cancelled, that itself does not have any material bearing in the present case, since a consideration of Sections 202 and 204 of the Contract Act might enure to the benefit of the petitioner with regard to his claim vis-à-vis the opposite party no. 2 in that regard.

The property-in-question was never made the asset of the partnership firm, which was, in any event, unregistered.

The petitioner's argument that the petitioner has subsequently taken out a suit for dissolution of the partnership firm, shows it all the more that the remedy of the petitioner lies against the opposite party no. 2.

The present case does not satisfy the cardinal tests governing the addition of parties.

In the present circumstances, the plaintiff/opposite party no. 1 does not claim any relief against the present petitioner in the suit.

Secondly, although the petitioner may be collaterally affected by the fate of the suit, there is no direct interest of the petitioner in the result of the suit, as framed.

The entire ambit of the suit is restricted to the dispute as to title with regard to the suit property between the opposite party no. 1 and opposite party no. 2, without having any connection with the claims *inter se* between the petitioner and the opposite party no. 2, which does not create any interest sufficient to entitle the petitioner to be impleaded in the present suit.

Such an impleadment would merely enlarge the scope of the suit, probably beyond recognition, and as such, was rightly refused by the trial court.

Whether the remedy of the petitioner lies against the opposite party no. 2 in damages or otherwise shall be a consideration for the appropriate court to decide, while taking up the suit of the petitioner for dissolution of the partnership firm. However, this Court is not inclined to go into the merits of such claim since that would only unnecessarily prejudice the parties and would be entering into a domain which is entirely beyond the jurisdiction of this court while taking up the present application under Article 227 of the Constitution of India.

In such circumstances, C. O. No. 17 of 2019 and the connected applications, bearing CAN 1 of 2019 and CAN 2 of 2019, are dismissed, however, without any order as to costs.

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

(Sabyasachi Bhattacharyya, J.)