

S/L. 4.
20.08.2019
MNS

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

C. O. No.23 of 2019

M/s. Cannon Paper Industries Private Limited
-Vs.-
Sri Dal Bahadur Thapa and others

Mr. Rajat Das,
Mr. Bijay Bikram Das

...for the petitioner.

Mr. Abhrajyoti Das

...for the opposite party nos. 1 to 3.

Affidavit-of-service filed in court today
be taken on record.

Heard the contesting parties.

The present challenge is directed at the
instance of a plaintiff in a suit, *inter alia*, for
declaration challenging certain sale deeds
and for incidental declaration and other
reliefs.

Learned counsel for the plaintiff-
petitioner argues that the trial court acted
without jurisdiction in allowing an application

for addition of certain persons at the instance of the defendants, despite the plaintiff, being the *dominus litis*, not being agreeable to implead them.

Learned counsel for the petitioner submits that, by a previous order dated April 17, 2018, the prayer of the plaintiff for expunction of the name of the predecessor-in-interest of the persons now sought to be impleaded was allowed. As such, the principle of *res judicata* also bebarred the trial court from passing the impugned order.

Such contentions are controverted by the defendant-opposite party nos. 1 to 3 and it is argued that the parties added by the impugned order are necessary as well as proper parties to the suit.

Upon a perusal of the order dated April 17, 2018, it is seen that the trial court, although allowed the application for expunction of the name of the proforma defendant, who had since expired, it was specifically observed by the trial court that if the suit was bad for non-joinder of necessary

parties then the sufferer would be the plaintiff and the defendants as well could take recourse of proper provision of law and could make a prayer for adding necessary parties to the suit.

In fact, paragraph – 10 of the plaint of the plaintiff-petitioner itself shows that the categorical allegations of the plaintiff were levelled against the predecessor-in-interest of the presently added parties, since such predecessor-in-interest was averred in the plaint to be a vendor of the deeds impugned in the suit.

It is evident from the nature of the pleadings that the vendors of the impugned deeds in the suit, the challenge against which deeds is the primary relief in the suit, are necessary as well as proper parties to the suit.

Moreover, the defendants did nothing more than take advantage of the rider in the order dated April 17, 2018, that they would be at liberty to take recourse of proper provision

of law to make necessary parties to the suit, by doing precisely so.

As such, the defendants have rather helped out the plaintiff by saving the suit from non-joinder of necessary parties, particularly in view of the observations of the order dated April 17, 2018, by impleading the heirs of the alleged vendor of the impugned deeds, who are, in fact, necessary parties to the suit.

In such view of the matter, although the impugned order was somewhat unhappy on reasons, the conclusion arrived at by the trial court was justified in view of the observations made above.

Under such circumstances, C. O. No. 23 of 2019 is dismissed on contest, thereby affirming the impugned order.

The trial court is requested to expedite the hearing of the suit as far as the business of the said court permits.

There will be no 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.)