

14/12/2020

Item 8 DL

Court No.19

AB Through Video Conference

C. O. 4286 of 2019

With

I. A. No. CAN 1 of 2020

I. A. No. CAN 2 of 2020

Khanu Bibi

Vs

Md. Kader Khan & Others

Mr. Ashim Kr. Routh ...for the Petitioner.

Mr. Samim Ahamed,
Mr. Arka Maiti,
Ms. Saloni Bhattacharya
...for the Respondent No.1.

This revisional application has been filed by a defendant in Suit No.8 of 2018, which was decreed by the learned Waqf Tribunal, West Bengal.

In the said suit, the petitioner was described as the defendant no.9 (proforma defendant).

It is the contention of the petitioner that by suppressing the fact that the appointment of the plaintiff/opposite party as the Mutwalli had been cancelled in O. A. No. 15 of 2010, the suit was filed by the plaintiff in the capacity of the present Mutwalli of the Waqf Estate.

It is further submitted that the fact that the Mutwalliship of the plaintiff was cancelled/set aside, was suppressed before the Court and the decree was obtained by fraud.

The next submission of the learned Advocate for the petitioner is that the proforma defendant no.9 was the main contesting party in the issues involved, inasmuch as, the defendant no.9 also claims Mutwalliship over the property. However, according to the learned Advocate for the petitioner, the defendant no.9 was not served with any summons with regard to the suit. The said defendant did not have any knowledge of the suit and the suit was decreed behind his back.

The learned Advocate for the opposite party submits that the carriage of proceeding is in the hands of the plaintiff and it is for the plaintiff to describe a defendant and that is why the petitioner was described as the proforma defendant.

It is further submitted that the proforma defendant does not have any right to move this Court challenging a decree of the Tribunal.

I have gone through the records. Admittedly, I find that the Mutwalliship of the opposite party no.1 was cancelled/set aside by the Tribunal. Secondly, the learned Advocate for the opposite party no.1 could not satisfy the Court that the proforma defendant No.9 was served with a notice of the suit.

In the Code of Civil Procedure, I find mentions of only defendants and plaintiffs and the expression “proforma defendant” is absent. If a person is added

as a party, such person is entitled to notice. Whether the defendant no.9 is a necessary defendant and the main defendant to contest the suit, is not for this Court to decide. This Court is only on the point that the suit ought to have been decided in presence of the defendant no.9. The proforma defendants ought to have been served with a notice of summon before the suit was taken up for final hearing.

Under such circumstances, the order impugned is set aside and quashed.

I have not gone into the merits of the claims and counter claims of the parties and the Learned Waqf Tribunal, West Bengal is directed to hear out Suit No.8 of 2018 afresh in accordance with law upon affording opportunity of hearing to the defendant no.9/ petitioner, who has not filed his written statement, to file his written statement. The parties will be at liberty to file oral evidence in support of claims or counter claims.

It is expected that the suit should be heard afresh and disposed of as expeditiously as possible, preferably within a period of six months.

The revisional application is, accordingly, disposed of along with all connected applications.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Sarkar, J.)