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SK
Ct. No. 18
26.07.2021

**C.O. No. 315 of 2020
(Via Video Conference)**

**Shri Tuihindra Narayan Roy
Vs.
Shri Atindra Narayan Roy & Anr.**

Mr. A. K. Gayen,
Ms. A. A. Gayen ... For the petitioner.

Mr. Sarathi Dasgupta,
Mr. Asoke Basu,
Mr. Arijit Basu ... For the opposite parties.

Affidavit of service filed in Court today be kept with the record.

The plaintiff in a suit for partition is the petitioner of the present application under Article 227 of the Constitution of India and is directed against order dated January 10, 2020 passed by the 1st Court of learned Civil Judge, (Senior Division) at Howrah in the said suit being Title Suit No. 49 of 2018.

The defendants/opposite parties in their written statement questioned the maintainability of the suit on the ground that the suit is bad for non-joinder of the necessary parties.

The learned Trial Judge by the order dated November 19, 2018 directed the defendants to supply the names of the necessary parties which they had mentioned in their written statement.

The defendants by the order dated March 29, 2019 were again directed to comply the order dated November 19, 2018 first.

The defendants thereafter disclosed the names of some persons claiming to be the necessary parties in the suit being co-sharers in respect of the suit properties.

The plaintiff was directed to take steps for addition of the said persons in the suit but the plaintiff by the application dated December 10, 2019 prayed that he may be exempted from taking steps to add the said persons on the ground that they are not the co-sharers in respect of the suit properties.

The learned Trial Judge by the order impugned has dismissed the said application of the plaintiff.

In a suit for partition all the co-sharers of the joint property are necessary parties. The plaintiff, if feels that the persons whose names have been disclosed by the defendants are not the co-sharers of the plaintiff in respect of the suit properties, as such, not necessary parties to the suit, he is at liberty not to add the said persons in the suit but ultimately if on trial the defendants are successful in establishing that the said persons are co-sharers in respect of the suit properties, the suit will obviously fail, for want of necessary parties.

The plaintiff therefore is exempted from taking steps to add the said persons in the suit at his own risk.

For the above reason, the order impugned is set aside. C.O. 315 of 2020 is disposed of with the above observations, without any order as to costs.

The learned trial Judge is requested to expedite the disposal of the suit.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)