

15
30.06.2021
TN

CO No.861 of 2020

(Via video conference)

Smt. Kalpana Shaw and others
Vs.
Sri Brojo Behari Shaw

Mr. Debnath Ganguly,
Mr. Supriyo Dutta,
Mr. Nirayan Roy

.... for the petitioners

A short point is involved in the matter. In view of the nature of the order proposed to be passed, no prior notice on the opposite party is deemed necessary.

Learned counsel for the petitioners contends that the petitioners instituted a partition suit and the original defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure. While dismissing the said application vide Order No.4 dated September 19, 2019, the trial court had turned down such application on merits. Thereafter, upon the original defendant having expired, the present petitioners filed a regular

substitution application under Order XXII Rule 4 of the Code of Civil Procedure for substitution of the legal heirs and representatives of the deceased-defendant.

However, thereafter one of such proposed substituted defendants came up with a written objection, even before the substitution application was allowed, taking objection to the application to the effect that the property was a trust property.

It is contended that, in view of same point having been decided against the original defendant in the application under Order VII Rule 11 of the Code vide Order No.4 dated September 19, 2019 and in view of non-impleadment till date of the objector as a party to the suit, the opposite party has no *locus standi* to file such objection.

However, the learned Trial Judge has fixed several dates and is going on hearing such objection for an indefinite period.

In the light of the submissions made by learned counsel for the petitioners, the ends of justice would be sub-served in the event the question of maintainability of the objection and *locus standi* of the opposite party to take out such an objection at this stage of the suit is kept open.

Accordingly, CO No.861 of 2020 is disposed of by requesting the Judge, Second Bench, City Civil Court at Calcutta to dispose of the application for substitution filed by the petitioners at the earliest upon consideration of the question of maintainability of such objection of the opposite party and the *locus standi* of the opposite party to move the same at this stage of the suit. Such exercise shall be completed at the earliest and the substitution application shall be disposed of by the trial court within three weeks from the date of communication of this order to the said court.

The petitioners shall serve a notice of this order along with server copy thereof on the opposite party as well as the trial Court at the earliest to ensure due compliance of the same.

The Trial Judge shall act on such communication without insisting upon prior production of a certified copy of this order.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)