

25.11.2021

Sl. No. 18

Court No.25

B.M.

C.O. 765 of 2018

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CAN 1 of 2021

Himadri Das & Anr.

Vs.

The Oriental Motor Accessories Agency Pvt. Ltd.

(Via Video Conference)

Mr. Shyamal Chakraborty ... for the petitioners

Mr. Noelle Banerjee

Mr. Dipak Dey

Ms. Swapna Mitra

... for the defendant/opposite party no.1

The revisional application together with CAN 1 of 2021 are taken up for consideration upon hearing.

Heard learned advocate for the parties.

In this revisional application under the Scheme of Article 227 of the Constitution of India, the petitioners/plaintiffs have assailed the order No.43 dated 13.12.2017 passed by the learned 4th Bench, City Civil Court, Calcutta in Title Suit No.6153 of 2009.

It is submitted that on prayer of the proforma defendant nos.2 and 3, their names from the suit was the expunged by learned trial court observing that they are not the necessary parties to the suit. Learned advocate for the petitioners invite my attention to the copy of the plaint to submit that the plaintiffs/petitioners instituted a suit for declaration and injunction praying for decree

that the plaintiffs are entitled to protect their interest in the suit property without being interfered by any third party and that defendant no.1 has no right to transfer, assign, sublet or part with possession of the suit property without consent of the plaintiffs in writing. Further decree of permanent injunction against the opposite party herein has been sought for directing the opposite party/ defendant No.1 not to transfer, assign or part with possession without written consent of the plaintiff.

It appears that both the prayers are corollary to each other. It is submitted that the plaintiff no.1 has 1/4th share and the plaintiff no.2 has another 1/4th share and thus jointly they hold fifty per cent share in the suit property and rest of fifty percent of the suit property originally belonged to a Pakistani citizen and after partition, proforma defendant No.2 was appointed custodian in respect of the enemy property of India represented through the Assistant Custodian of Enemy Property, hence, it is contended that as the suit property has not been partitioned, the presence of the respondent no.2 and 3 is very much necessary in order to decide the issue in the suit.

The learned trial court by the impugned order was of the wishful thinking that the defendant nos.2 and 3 are not necessary parties to the suit and thereby their names were expunged from the cause title of the plaint.

It is submitted on behalf of the opposite party that as per Amendment Act, 2017 suit is liable to be dismissed against them and the learned trial court having regard to the provision of Section 18B of the Enemy Property (Amendment and Validation) Act, 2017 has rightly opined that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any property or any action being taken by the Central Government or the custodian in that regard.

In my view there is no dispute as to the amending provision relating to Enemy Property Act that Civil Court should not interfere into the matter but the moot issue in the suit is required to be decided because the defendant no.1/opposite party herein is a tenant inducted by the plaintiffs in respect of the suit property on payment of fixed rent. That apart, no relief is sought for against the defendant no. 2 and 3 in the suit rather, they have been impleaded as proforma defendants being the custodian of 50% of share in the Enemy Property as such their presence is necessary, since, apprehension in mind of the plaintiffs/petitioners is that the opposite party/defendant no.1 is trying to deal with the property by way of assignment, transfer, the suit property, suit has been brought before the learned trial court to restrain the defendant no.1 from dealing with the property by way of transfer or assignment or parting with the possession to

any third party without written consent of the plaintiffs. These issues are required to be decided by the learned trial court on evidence. It is pertinent to take note of the order dated 10.05.2010 passed in FMAT 419 of 2010 (CAN 2511 of 2010) by the Division Bench of this Hon'ble Court as pointed out learned advocate for the defendant no.1/opposite party that by consent of the parties, the matter was taken up for hearing and the Hon'ble Court was pleased to request the learned trial court to dispose of the suit as expeditiously as possible preferably by December, 2010 with further direction upon the defendant/ respondent no.1/ opposite party herein not to transfer, alienate, encumber or part with the possession of the tenanted property being the subject matter of the suit property till the disposal of the suit. Accordingly, it is pointed out that there is no justification in staying the suit vide order dated 1.5.2018 passed in CO 765 of 2018 as the order passed is by suppression of the aforesaid order of the Division Bench of this Hon'ble Court.

In my considered view, the proforma defendant nos.2 and 3 are proper parties, if not necessary, as their presence is necessary in the interest of adjudication of the suit on the issue as discussed above. It must be borne in mind that a proper party is a party who, though not a necessary party, is a person whose presence would

enable the Court to completely, efficiently and adequately adjudicate upon all matters in dispute in the suit as per Order 1, Rule 10 of Code of Civil Procedure, 1908.

In the context of the above, the impugned order dated 13.12.2017 is hereby set aside and the plaint, as it was filed stands revived. Ergo, the revisional application being C.O 765 of 2018 together with CAN 1 of 2021 is decided and disposed of with the request to the learned Judge to proceed with the trial and dispose of the suit as expeditiously as possible preferably within six months from the date of communication of this order and without giving any adjournment to any of the parties and see to it that parties to the suit do not flout the Court's order and the learned Judge is at liberty to impose exemplary cost against any of the party trying to avoid trial to dispose of the suit within the time frame as in the earlier occasion, this Court finds that the order of Division Bench of this Hon'ble Court was not obeyed in its letter and spirit.

The opposite party/defendant no.1 is forbidden from dealing with the suit property by way of transfer or assignment to any third party till the disposal of the suit.

All parties shall act in terms of server copy of the Order downloaded from the official website of this Hon'ble Court.

(Shivakant Prasad, J.)