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C.O. 1450 of 2018

Ct.8.

Saswati Barui & anr. Vs. Manju Shee & Ors.

Mr. Animesh Paul

..For the petitioner.

Affidavit of service filed in Court and earlier service of sentence reflects that service has been effected upon all the opposite parties. Since none has appeared on behalf of any of the opposite parties, this Court is compelled to take up the revisional application for consideration on its merit upon hearing Mr. Animesh Paul, learned advocate for the petitioner.

The facts leading to this application is that the petitioners herein along with proforma opposite parties nos. 9 to 11 being plaintiffs have brought a suit for partition against the opposite parties no. 1 to 7 herein, being Title Suit no. 407 of 2015 before the learned Civil Judge (Sr. Division), 2nd Court at Howrah, inter alia, praying for a decree of declaration that the plaintiffs have every right over the joint property i.e. suit property and for a decree of partition in preliminary form declaring the share of plaintiffs no. 1-3 having 1/7th share jointly and plaintiffs 4 & 5 having 1/7th share each over the suit property and to appoint partition commissioner to effect partition by metes and bounds according to the share of the parties over the suit property.

In this revisional application the petitioner has assailed the order dated 12.12.2017 passed by the Learned

Civil Judge (Sr. Division), 2nd Court at Howrah in T.S. No. 407 of 2015.

To contest the suit for partition, defendants/opposite parties have entered appearance by filing written statement denying all materials made in the application.

The contentions specifically made is that on 08.09.2016, the opposite party no. 8 herein being an outsider, has filed an application under Order 1 Rule 10(2) CPC, 1908 for adding him as defendant in the said suit on contention that he has entered into a joint development agreement dated 30.03.2012 with the owners and occupiers of the suit property and a General Power of Attorney dated 18.04.2012 has also been executed in his favour. It was further averred that subsequently, one of the executants Krishnapada Shee died on 27.07.2015 leaving behind his wife as his only heir Smt. Manju Shee and thereafter, a supplementary agreement dated 21.12.2015 and General Power of Attorney dated 21.12.2015 were executed in favour of the opposite party no. 8 and by virtue of said instruments, he has constructed and completed the proposed construction of 6(six) storied building by investment of huge amount of money. So, the opposite party no. 8 claimed that he has directed interest in the newly constructed building and a necessary party for fair adjudication of the suit, as such sought for being added as defendant in the said suit for partition.

The opposite party no. 8 was impleaded as defendant despite objection by the petitioner denying the Development Agreement and General Power of Attorney in favour of the opposite party no. 8. for construction of six storied building in the said property.

Being aggrieved by the impugned order, the petitioner has preferred this revisional application under the scheme of Article 227 of Constitution, assailing the said order contending that nature of the suit is a suit for partition. As such, the so called developer whose possession may be considered as that of the licensee, cannot be added as party to such a suit because opposite party no. 8 being outsider is not the necessary party to a partition suit as he is not a co-sharer to the suit property.

On perusal of the impugned order this Court finds that the learned trial court added the opposite party no. 8 as a party defendant to the suit without considering the scope of adjudication of a suit for partition as the opposite party no. 8 being the third party developer cannot claim to be a co-sharer in respect of suit property in a suit for partition, which is beyond the scope of adjudication of such suit. Therefore, the observation made by the learned trial court in the impugned order that the petitioner/opposite party no. 8 has vested interest in the suit for partition appears to be beyond the scope of consideration as the nature of the suit is for partition where only the co-sharers of the suit property and heirs are the necessary parties.

Therefore, the order impugned dated 12.12.2017 passed in T.S. No. 407 of 2015 is liable to be set aside as the opposite party no. 8 cannot be impleaded as party in the suit for partition between the co-sharers although, he may claim his interest after the final decree.

Thus, the revisional application being C.O. 1450 of 2020 is disposed of, however, without any order as to costs.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Shivakant Prasad, J.)