

46 08.11.2021
AN Ct. No. 16
RP

FMAT 412 of 2021
with
IA No. CAN 1 of 2021

Ranjit Ghosh
vs.
Ajit Ghosh & ors.

Mr. Mohammad Mahmud
Ms. Chandana Roy ... for the appellant

The present appeal arises from an order dated 27.04.2021 passed by the learned Civil Judge (Senior Division), First Court, Howrah in T.S. No. 526 of 2018 by which an application for temporary injunction was dismissed on the ground of non-impleadment of co-sharers, being necessary parties.

The plea sought to be raised in the suit that the property originally belonged to one Badal Ghosh, who during his life time executed a deed of settlement divesting his right, title and interest in respect of the suit property in favour of his heirs. It is contended that the property described in Schedule 'ka' to the said deed of settlement was exclusively given to the predecessor-in-interest of present parties, namely, Bhabataran Ghosh and upon his demise the aforesaid 'ka' Schedule property devolved upon the parties and heirs and successors. Admittedly, the property comprised in the said several terms, being the part of the deed of settlement, comprised of a large tract of land wherein a portion thereof has been earmarked in Schedule 'ka' appended thereto. This led

the plaintiff belief that the said property has been demarcated by virtue of the said deed of settlement to the exclusion of other heirs of Badal Ghosh and therefore they were not implead as parties in the said suit.

It appears from the findings returned by the trial court that the said Badal Ghosh by virtue of the deed of settlement got $\frac{1}{2}$ satak of property out of six satak of land and, in fact, divested such right, title and interest to Bhabataran Ghosh, predecessor-in-interest of the present parties. The moment the original owner had an undivided share in respect of the property even if he executed a deed of settlement he cannot impinge upon the shares of the other co-sharers nor the partition can be effected unilaterally to the exclusion of the other co-sharers.

Since the heirs and successors of Badal Ghosh have not been impleaded as parties in the said suit for partition and the suit appears to have been restricted to the heirs of Bhabataran Ghosh, there is no anomaly in the impugned order that the other co-sharers are necessary parties and ought to have been impleaded in the suit for partition. Since the aforesaid point strikes at the root of the maintainability of the suit for partition, we do not find any illegality and/or infirmity in refusing to pass an order of injunction by the trial court.

However, we make it clear it is open to the plaintiff to take necessary steps, as may be advised, and if such steps are taken, the trial court shall decide the same in accordance with law.

The appeal and the connected application are dismissed.

(T. S. Sivagnanam, J.)

(Harish Tandon, J.)