

02. 07.12.2021
Ct. No.21

C.O. 1821 of 2021

Yaram Nazneen

-VS-

Umesh Koshta & Anr.

(Through Video Conference)

Mr. Prabal Kumar Mukherjee,
Mr. Tarak Nath Halder,
...for the Petitioners.

Mr. Balaram Ganguly,
Mr. Kartick Mondal,
Mr. Prasun Mukherjee,
...for the Opposite Party.

Assailing the order dated 06.04.2021 passed by learned Civil Judge (Junior Division), 1st Court, Sealdah in Ejectment Suit no. 26 of 2012 rejecting the application of the petitioner under order 1 rule 10 C.P.C. for addition of party in the said suit as plaintiff the petitioner has filed the present revisional application.

Smt. Ranjana Aditya (Dutta Chaudhury) had filed Ejectment Suit No. 26 of 2012 against her tenant Subhadra Devi Mahabar on the ground of default and reasonable requirement, but during pendency of such suit Ranjana Aditya died on 19.12.2018 leaving behind the petitioner as her natural legal heir.

It is the case of the petitioner Ranjana Aditya was earlier married to one Biraj Sarkar and out of the said wedlock the present petitioner was born on 02.11.1981. Subsequently the said marriage was dissolved by a decree of divorce in the year 1986. Thereafter, her mother married Saibal Dutta Chowdhury and had a son named Saumak from second marriage.

The petitioner has further alleged on the death of her mother stranger Umesh Koshta has got himself substituted as plaintiff in the Eviction suit no. 26 of 2012 filed by her mother claiming as a sole executor of the will executed by Ranjana during her life time. Then the petitioner along with her step-father and half-brother filed Title Suit No. 1329 of 2018 claiming right, title and interest over the suit property against Umesh Khosta and such suit is still pending.

She is contesting O.S. No 05 of 2019 for Probate filed by Umesh Koshta and where she has challenged the legality and validity of the alleged will of her mother and such Probate suit is also pending.

The petitioner has alleged she was the one who performed the last rites of her mother and she used to collect the rent of the disputed property from the tenants. If she is not impleaded as co-plaintiff in the eviction suit filed by her mother, then her interest as a natural legal heir who is lawfully entitled to inherit the

property would be prejudiced and she would suffer irreparable loss.

Learned lawyer for the petitioner contended that order under challenge is devoid of reasoning. While rejecting the petition under order 1 Rule 10 (2) of the Civil Procedure Code, the learned Court below has merely observed “no substantial reason to add an objector of the will of the original plaintiff as a party to the eviction suit”. Therefore, he prays for setting aside such order. Learned lawyer refers to a Chandi Charan Paul vs. Rabindra Nath Adhikary and Another reported in 2001 (1) CHN 668 in support of his contention.

On the other hand learned lawyer for the opposite party contended that learned court below has rightly passed the impugned order as the original owner of the property has already bequeathed the suit property in favour of the opposite party during her life time. He refers to section 211 and 305 of Indian Succession Act, and submits that executor need not wait for the grant of the Probate as being the legal representative of the deceased for all purpose and title of the testatrix stands vested in the executor on death and can prosecute the pending lis and will also liable for the dues and debts of the deceased to the extent of the estate of the deceased covered by the will. This court does not deny such proposition of law.

Moreover, when the executor of the disputed will has already been substituted as a plaintiff in the ejectment suit.

The only issue to be looked by this court in the present revision is whether learned court below has rightly rejected the petition under Rule 10(2) of CPC filed by the petitioner one of the natural legal heirs of the deceased landlady of the disputed property to get herself added as Co-plaintiff.

It has come on record the petitioner who was born as a Hindu got herself converted to Islam after marriage and adopted Muslim name Yaram Nazneen. In view of Section 26 of Hindu Succession Act, 1956 a Hindu who converts to another religion is not disqualified from inheriting the property of any of his/her Hindu relatives, but his/her children who do not follow Hindu religion are disqualified. Here, the petitioner who ceased to be a Hindu due to her conversion to Islam after marriage is not disqualified to inherit the property left behind by her deceased mother Ranjana Aditya along with other Class I legal heirs, provided her mother had died intestate without leaving any will.

In the present case it has come on record the deceased Ranjana Aditya had left behind a will executed in favour of a stranger Umesh Kostha. The executor/ beneficiary has already filed for Probate of

the last will of Ranjana Aditya, the mother of the petitioner in O.C. No.05 of 2019 and the present petitioner and others are contesting the said Probate Suit by filing written objection and where they have challenged the legality and validity of the will.

It has also come on record those legal heirs of the deceased has filed another Title Suit being No.1320 of 2018 against the alleged executor, for declaration of their title over the disputed property

In view of the aforesaid circumstances two situation is likely to arise in future:- (1) In case the Probate case succeeds and reach its finality, then it can be safely held deceased Ranjana Aditya by executing the will in question bequeathed the property mentioned therein in favour of the stranger executor beneficiary mentioned in the will depriving her natural legal heirs.

(2) In case the disputed will is proved to be false, illegal, invalid and ineffective then her legal heirs as per Hindu Succession Act, will inherit the property left behind by her.

In the second scenario mentioned above if the natural legal heirs are not made party in the eviction case filed by the original deceased landlady against tenant, then they will be deprived of their rights over the rent of the suit property and such situation germinates multiplicity of cases between the natural

legal heirs and the executor of the will and if the will is declared to be void by court of law.

Keeping in view such facts, the petitioner the daughter of the deceased landlady is a proper party to be impleaded in the eviction suit along with the executor of the will in question.

Having regards to the discussion made above, this court is of view the impugned order suffers from illegality and material irregularity for rejecting the application of the petitioner merely on the ground that no substantial reason was found to add an objector of the will as a party to the eviction suit.

Therefore, the order impugned is set aside and application of the petitioner under order 1 Rule 10 (2) Code of Civil Procedure, 1908 is allowed. Let the petitioner be added as a Plaintiff in the Ejectment Suit No.26 of 2012. The Learned court below is directed to do needful.

Since the fate of the Probate Case No.05.2019 is likely to affect the of rights of both the present petitioner as well as that of Umesh Kosta the alleged executor of the will, to maintain the Ejectment Suit No.26 of 2012 and also the maintainability of another Title Suit No.1329 of 2018 for declaration of title with consequential relief filed by the present petitioner and others against Umesh Kosta, the executor, **this court direct the Learned Additional District Judge, Fast**

Track 2nd Court at Sealdha to dispose of Original Suit No.5 of 2019 pending in his court at the earliest in any event within six months from the date of communication of this order and restraining itself from granting adjournments to the parties without any justification.

Registry is directed to send copy of this order to Learned Additional District Judge, Fast Track 2nd Court at Sealdha, for compliance.

Accordingly, **C.O. no. 1821 of 2021** stands dismissed.

Interim order, if any, stands discharged.

There will be no order as to costs.

In view of the order made above affidavits are not invited. Allegations made shall be deemed to be denied.

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

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)