

15.12.2021
Ct. No.21
05,249&250
ab

C.O. 2070 of 2021

Bijit Behari Shaw

-VS-

Kalpana Shaw & Ors.

With

C.O. 2049 of 2021

Smt. Kalpana Shaw & Ors.

-VS-

Bijon Behari Shaw & Ors.

With

C.O. 2431 of 2009

Brojo Behari Shaw

-VS-

Smt. Kalpana Shaw & Ors.

Mr. Debnath Ganguly,
Mr. Supriya Dutta,
Ms. Aishwarya Pratihari,
...for the Petitioner Kalpana Shaw & Ors.

Mr. Souradipta Banerjee,
Ms. Fatima Hassan,
Ms. Dayamanti Kundu,
...for the Opposite party Bijon, Bijit & Ors.

By filling C.O. 2049 of 2021 the plaintiffs/petitioners have prayed for expeditious disposal of Title Suit No. 1415 of 2008 pending before the learned Judge, 2nd Bench, City Civil Court at Calcutta and where they have prayed for partition of premises no. 122/B, Manicktala Street and for declaration of deed dated 04.09.1943 to be illegal and void. I shall be dealing with this revisional application in the later part of this order.

By filling C.O. No. 2070 of 2021 the substituted defendant Bijit Behari Shaw has challenged the order of substitution under Order 22 Rule 4 Civil Procedure Code dated 20.07.2021, passed by the learned Judge, 2nd Bench, City Civil Court at Calcutta, in Title Suit No. 1228 of 2019 filed by the plaintiffs/opposite parties no. 1 to 3 for declaration, for partition and for consequential relief in respect of premises no. 124/2A, Manicktala Street, comprising 3 Cottahs and 8 Chittaks land.

At the time of hearing of the above two revisions, learned Advocates for both sides have requested this Court for requisition of the record of another C.O. being No. 2431 of 2009 arising out of Title Suit No. 1415 of 2008 pending before the another co-ordinate bench and where Brojo Behari Shaw (since deceased) had challenged the order of rejection of his application under Order 7 Rule 11 of Civil Procedure Code dated 06.06.2009.

Gone through the record of Title Suit No. 1228/ 2019 where impugned has been passed by the learned lower court and it appears the said suit has been filed by Smt.

Kalpana Shaw and her two children against Brojo Behari Shaw for declaration, permanent injunction, partition and accounts in respect of property measuring 3 Cottah and 8 Chittaks appertaining to holding no. 124/2A, Manicktala Street. That sole defendant Brojo Behari having died intestate on 06.10.2019, leaving behind widow wife and a son, the present petitioner as his legal heirs, the plaintiffs have prayed for their substitution by filing petition under Order 22 Rule 4 Civil Procedure Code. Since the suit is for partition and as such each and every co-sharers are required to be brought on record, but it is the contention of the petitioner the property in question belongs to the deities and he being the sole trustee of the deities there is no need to implead his mother as a defendant. Therefore, by filing the present revisional application he has challenged the order of substitution.

Whether the present petitioner is the sole trustee of the deities or not need to be decided in view of the averments made in the pleadings of the parties in the pending Title Suit No.1415 of 2008 and in Title Suit No.1228 of 2019 and which I shall be discussing hereunder.

From the records of the above mentioned C.O.s and the material therein, it is seen Banku Behari Shaw, the predecessor in-interest of parties to the above revisional applications was the owner of the property involved in both the Title Suits mentioned above. He during his life time had executed a registered will on 24.11.1925 and dedicated the front side of property appertaining to holding no. 122 in favour of Thakurs Sree Sree iswar Binode Behari and Sree

Binodeshwar Mahadev and back portion he bequeathed in favour of his four sons namely Bono Behari, Bipin Behari, Pulin Behari and Bijoy Krishna with condition that said portion will use and occupy by them but no power to transfer in any form without making amicable partition among themselves. The said testator died on 24.05.1927 and will was probated in the year 1927. in the meantime the holding number 122 was divided into two and renumbered the front portion dedicated to deities as 122/A and the retained back portion as 122/B.

There was partition among the four sons of original owner Banku Behari in respect of back portion of property appertaining to holding no. 122/B and in such partition Bono Behari got the holding no. 122/B. Bono Behari had five sons and he made gift of holding no. 122/B only in favour of his four sons namely Bijon, Bangshi, Bimal and Birnich vide registered deed dated 1943 and thereby excluded his eldest son Bipin Behari, the predecessor of the contesting present petitioners and respondents. So, here a question arise how the legal heirs of Biman Behari can claim interest in the property appertaining to holding no. 122/B and how they can claim share in the rent collected from the property appertaining to holding no. 122/A, Manicktala Road, which is dedicated to the deities. No clear picture has come on record how the legal heirs of Bipin has come into possession of holding no.124/2A.

Be that as it may, Smt. Kalpana Shaw & Ors. have alleged that they have acquired interest in the disputed properties by virtue of inheritance along with other whom

they have arrayed as defendants in those two cases, from common predecessor in interest. It is settled principal of law in a partition suit all the co-owners/co-sharers have to brought on record and the entire joint properties of the co-owners and co-shares into the common hotchpotch for partition by metes and bounds.

Therefore, this court hold that learned Court below has rightly exercised its jurisdiction and allowed the substitution application by bringing on record the two legal heirs of sole defendant Brojo Behari who had died intestate. Substituting the wife of deceased Brojo Behari and mother of the petitioner as defendant in Title Suit No.1228/2019 is not likely to prejudice the interest of the present petitioner. Rather this court too is of view she is a necessary party being a co-sharer in a suit for partition. This Court does not find any illegality or material irregularities in the impugned order.

However, in view of the discussions and findings made above this Court holds Title Suit No. 1415 of 2008 and Title Suit No.1228 of 2019 need to be hard analogously for proper determination of the dispute and to come to the right findings.

The plaintiff by filling C.O. No.2049 of 2021 has prayed for expeditious of disposal of Title Suit No. 1415 of 2008.

Accordingly **C.O. No. 2049 of 2021 is allowed** and **C.O. No. 2070 of 2021 is dismissed along with connected applications.**

Interim orders, if any, shall stand discharged.

Learned Judge, 2nd Bench, City Civil Court at Calcutta, is hereby requested not only to hear both Title Suit No. 1415 of 2008 and Title Suit No. 1228 of 2019, analogously but also to dispose of both the Suits at the earliest in an any event within a period of one year from the date of the communication of this order and restraining itself from granting unnecessary adjournments to the parties without any reasonable ground. The learned Court below should not be influenced by the observation made above while disposing the above mentioned Title Suits. Learned Court below is to decide both the suits on the basis of oral and documentary evidence that will be produced by the parties at the time of trial.

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

There will be no order as to costs.

Let the record of C.O. No. 2431 of 2009 be returned to the concerned Court from where it was requisitioned. Let the record be placed before the appropriate Bench for disposal.

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.)

