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22.12.2021
Ct. No.21
(NB)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

CO 2065 of 2021
(Via Video Conference)

Subrata Tarafdar
Vs.
Akhil Tarafdar & Anr.

Mr. Koustav Chandra Das.
... for the petitioner.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das.
...for the OP No.1.

Mr. Sourav Sen
...for the OP No.2.

Affidavit of service filed in Court today is taken on record.

Being aggrieved by the order of rejection of an application under Order 1 Rule 10(2) of the Code of Civil Procedure dated 22.11.2019 filed by the petitioner to get himself impleaded as a party in Title Suit No.1124 of 2017, by the learned Civil Judge (Junior Division) 4th Court, Alipore in Title Suit No.1124 of 2014 has preferred this application under Article 227 of the Constitution of India.

The petitioner and the opposite parties are three brothers. The property in dispute was initially under the occupation of their deceased father Kanailal Tarafdar as a tenant. It is the case of the petitioner that Kanailal Tarafdar had entered into an agreement of sale with the owner of the said property and

made part payment towards consideration money, but sale transaction could not complete as Kanailal Tarafdar expired. On the expiry of Kanailal Tarafdar all his children entrusted one of his sons, Akhil Tarafdar to obtain succession certificate and permitted him to withdraw the money of deceased Kanailal Tarafdar lying in deposit with the banks. With such money the disputed property was purchased in the joint names of the opposite parties as trustees.

Further, it was agreed between the brothers and sisters that opposite party nos.1 and 2 will execute separate deeds in respect of their share in the disputed property but which they failed to do so. Then petitioner was compelled to file Title Suit No.2 of 2006 for declaration and partition. The said suit was dismissed and against which appeal has been filed and which is pending before this Hon'ble High Court.

It has also come on record that opposite party no.1 has filed a partition suit against the opposite party no.2 for getting disputed property partitioned which they have jointly purchased in the year 1984. Opposite party no.1 has also filed another Title Suit No.1124 of 2017 against the present petitioner for recovery of possession of the property which is under the occupation of the present petitioner.

The order under challenge is passed in respect of a case which has been filed by opposite party no.1 against opposite party no.2 for partition of the disputed property which they have purchased in their joint names in the year 1984. The petitioner by

filling the impugned application wants to get himself impleaded as one of the parties.

On perusal of the plaint of Title Suit No.2 of 2006 filed by the plaintiff for declaration and partition of the disputed property nowhere he has prayed for cancellation of the deed standing in the joint names of opposite party no.1 and opposite party no.2. In that case it can be assumed that the petitioner does not challenge the validity of the sale deed dated 1984 in respect of suit property standing in the names of his two brothers. So it is not known how the present petitioner can claim to be a co-sharer in the property standing in the joint names of his two brothers and which they had purchased long 37 years ago. Therefore, this Court does not find the petitioner to be a necessary party or a proper party in a suit for partition between two joint co sharers who have purchased the same and have not acquired interest by virtue of inheritance. Therefore, this Court does not find any illegality or irregularity in the order impugned.

The revisional application being CO 2065 of 2021 is dismissed.

Interim order, if any, stands discharged.

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

There will be no order as to costs.

Parties are to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(Kesang Doma Bhutia, J.)