

02  
25.08.2021  
TN

CO No.3629 of 2019

Sabita Ghosh  
Vs.  
Nandai Mithun Fans Association and others

Mr. Bhagbat Chaudhuri

.... for the petitioner

Mr. Jyoti Prakash Chatterjee,  
Mr. Sayan Kanjilal

.... for the opposite party nos.12 and 13

The present challenge has been mounted against an order, whereby the trial Court allowed an application of the opposite party nos.12 and 13 for adding themselves as defendants in a suit filed by the plaintiff/petitioner for declaration of her right, title and interest in the suit property and for permanent injunction restraining the defendants in the suit and their men from creating disturbance with the peaceful possession of the plaintiff over the scheduled land.

It is submitted by learned counsel for the petitioner that not only is the impugned order cryptic and devoid of proper reasons, the premise on which the trial court proceeded is not sanctioned by law. It is

submitted that mere addition of the proposed added parties as respondents in a previous writ petition in connection with police inaction cannot be a ground for adding the opposite party nos.12 and 13 as a party to the suit.

Learned counsel for the opposite party nos.12 and 13 vehemently opposes such contention and submits that a portion of the suit property has been vested by the Government of West Bengal in favour of “Asannagar Colony Hindu Sadharanar Pujar Janna Babharjho”.

It is seen from the impugned order that the trial court refused to place reliance on the entries in the LRROR, which is the last such land survey done in the State of West Bengal, on the ground that such entries are old documents, although such entries clearly indicate that the opposite party nos.12 and 13 are not in possession of any portion of the suit property.

That apart, there is nothing pleaded in the application under Order I Rule 10 of the Code of Civil Procedure to indicate that the purported entity, in favour of which a portion of the land was allegedly settled, is a juristic entity in the eye of law, being registered or otherwise so authorised under any statute.

It is well-settled that a fluid and inchoate body of persons cannot form a juristic entity in the eye of law for the purpose of vesting of title in its favour.

That apart, the opposite party nos.12 and 13 claimed interest in the property in their individual capacities, the basis of which is not borne out by the averments made in the application for addition of party.

Over and above, the mere fact that the opposite party nos.12 and 13 were impleaded as respondents in a writ petition against police inaction, since the said opposite parties were allegedly disturbing the possession of the petitioner in respect of the suit property, cannot be a valid justification for the said opposite parties being either necessary or proper parties in a declaratory suit.

The plaintiff is the *dominus litis* and it is entirely upon the plaintiff to prove her own case in the suit. The addition of the opposite party nos.12 and 13 on such vague grounds, as indicated above, would only operate to the detriment of early disposal of the suit and would unnecessarily widen the conspectus of the dispute involved in the suit, entirely besides and beyond the original issues involved therein.

Moreover, the opposite party nos.12 and 13, in their individual capacities, have failed to show even a

semblance of any right in the suit property and/or to plead the same in their application under Order I Rule 10 of the code of Civil Procedure. As such, the said opposite parties are neither necessary nor proper parties to the suit and the trial court acted palpably without jurisdiction in adding them as defendants.

Accordingly, CO No.3629 of 2019 is allowed, thereby setting aside Order No.30 dated July 18, 2019 passed by the Civil Judge (Junior Division) at Kalna, District: Purba Bardhaman in Title Suit No.188 of 2015.

It is made clear that further service on the other opposite parties are deemed unnecessary, since the contesting opposite parties, that is, opposite party nos.12 and 13, are represented by counsel in court today.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)