

14.
sg 17-03-2022

FA 102 of 2018
CAN 2 of 2021

Ct. 8

Dr. Smt. Saswati Kirtania @ Dr. Saswati Dutta & Anr.
Versus
Smt. Kakali Das & Anr.

(Through Video Conference)

Mr. Partha Pratim Ray, Adv.
Ms. Sayantanee Chattopadhyay, Adv.
...for the appellants

Mr. Suprovat Bhattacharya, Adv.
Mr. Mrinal Kanti Biswas, Adv.
...for the respondents

We have heard the learned Counsel for the parties.

The learned Trial Judge dismissed the partition suit fled by the appellants for failure to join necessary parties and to include all joint properties in the hotchpotch of the suit. The basis of the order appears to be disclosure of some alleged right of one Dhiren Kirtania. The name of Dhiren Kirtania appears to be transpired during evidence and contemporaneously not admitted by the plaintiffs. The learned Trial Judge however, found Dhiren Kirtania to be a co-owner of the property and non-inclusion of the suit properties of Dhiren Kirtania in the hotchpotch of the present suit, resulted in the dismissal of the partition suit.

Mr. Partha Pratim Ray, learned Counsel appearing on behalf of the appellants submits that no where in the pleadings the defendants have alleged that Dhiren Kirtania is the co-owner of the suit property or his properties were considered to be the joint properties for the purpose of the suit. However, having regard to

the fact that the name of Dhiren Kirtania came up during evidence, we are of the view that the suit should have been disposed of in his presence.

On that score, we feel the learned Trial Court was justified in dismissing the suit for non-joinder of necessary party and non-inclusion of the properties, which alleged to be the exclusive property of the Dhiren Kirtania.

However, the suit is a partition suit. This order would not prevent the appellants to file a fresh suit upon curing the defects as in a partition suit such dismissal would not act res-judicata in subsequent proceeding with fresh addition of party and inclusion of properties. There can also be more than one preliminary decree on the discovery of new facts.

Taking into consideration such aspects of the matter, we remand the matter to the learned Trial Court with liberty to the appellants to serve interrogatories upon the respondents within two weeks from date with regard to the properties which are required to be incorporated and the parties who need to be added in the partition suit and thereafter to amend the plaint as may be advised.

On the basis of such interrogatories, the learned Trial Court shall decide the suit afresh and to pronounce a fresh judgment after taking evidence, if necessary.

In the event the appellants failed to serve interrogatories, the impugned decree shall revive.

The impugned judgment and the decree is, thus, set aside.

The appeal, being FA 102 of 2018 and the application being CAN 2 of 2021 are accordingly, disposed of.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)