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C.O. 125 of 2022
(Through Video Conference)

Sree Sree Ananda Moyee Dakshina Kalimata Thakurani
& Anr.

-vs-

Sri Satyendra Nath Chakraborty & Ors.

Mr. Arif Ali

....for the petitioners.

In this revisional application the order of the Civil Judge (Senior Division), 10th Court, Alipore dated 7th January, 2022 is under challenge.

Mr. Ali, learned advocate appears on behalf of the petitioners/plaintiff no.2 and has submitted that the impugned order dated 7th January, 2022 is not tenable chiefly on the ground that previously challenge was thrown to the order of the court below dated 30th June, 2017 whereby the application of the respondent no.7 for addition of party as defendant in the pending suit was allowed; a coordinate Bench while considering the first revisional application being C.O. 2992/17 made following observations:-

“The petitioner since is seeking addition in the suit and since the plaintiff no.2 is objecting the addition of the said defendant, it is incumbent upon the opposite party no.7 to substantiate her such claim

at least, prima facie, by some document or by any other evidence. Merely because some of the defendants are not objecting her addition in the suit cannot give her a right to be added in the suit unless she qualifies the taste (sic) of her presence in the suit being a necessary party at least as a proper party.

In view of such position of the matter, the order impugned is set aside.

The learned Trial Judge is directed to decide the application filed by the opposite party no.7 under Order 1 Rule 10(2) of the Code afresh in accordance with law.

The opposite party no.7 is granted liberty to file documents and/or evidence in support of her claim. The petitioners are entitled to file documents/evidence in rebuttal.

However, the learned Trial Judge shall make all endeavour to dispose of the said application within three weeks from the date of communication of this order without granting any unnecessary adjournment to either of the parties.”

By placing reliance upon the said order

dated 20th November, 2019 it has been submitted on behalf of the petitioners that while considering the application of the respondent no.7 under Order 1 Rule 10(2) the court below went on considering the documents/evidence produced by respondent no.7 and no opportunity was given to the petitioners to deal with those documents/evidence before passing the order which is impugned in this revisional application. In addition thereto, it has been contended on behalf of the petitioners that defendant nos.1 & 2 are the legal heirs of late Panchanan Chakraborty who did not oppose the statement on number of legal heirs left by the said late Panchanan Chakraborty in their written statements in connection with the plaint of the petitioner/plaintiff, in other way it is submitted that though the defendant nos.1 & 2 are legal heirs being brother and sister of the plaintiff no.2 and equally circumstanced but they did not oppose the statement of the petitioner/plaintiff made in the plaint relating to the number of heirs of said late Panchanan Chakraborty. Therefore, it is submitted on behalf of the plaintiff/petitioner no.2 that the order impugned dated 7th January, 2022 in this revisional application warrants interference.

While considering the case made out on

behalf of the petitioners this Court has perused the order passed by a coordinate Bench dated 20th November, 2019 on the revisional application being C.O. 2992/17 wherein the coordinate Bench directed that the court below should not solely proceed on the basis of the stand taken by the defendant nos.1 & 2 at the time of consideration of the application under Order 1 Rule 10(2) but reliance should be placed, at least *prima facie*, on some documents/evidence of the respondent no.7 while adjudicating the issue involved in the present case.

On perusal of the impugned order dated 7th January, 2022, it appears that the court below while deciding the claim of the respondent no.7 placed reliance on Voter Identity Card, School Leaving Certificate, Legal Heir Certificate as well as Aadhar Card of respondent no.7 who has been claiming to be one of the daughters of late Panchanan Chakraborty.

This Court has also considered the written objection filed by the petitioners before the court below to the application under Order 1 Rule 10(2) which is at pages 45 to 47 of this revisional application. On perusal of paragraph 4 of the said written objection it transpires that the petitioner

save and except admission being made by the defendant nos.1 & 2 in their respective written statements in connection with the plaint took no other points in order to refute the claim of the respondent no.7 being one of the legal heirs of late Panchanan Chakraborty. It was open to the plaintiff no. 2 to at least indicate some of the documents in his written objection in order to show that save and except the petitioner and defendant nos.1 & 2 no other legal heirs have been left behind by late Panchanan Chakraborty.

In this backdrop of the case relating to application filed by the respondent no.7 under Order 1 Rule 10(2) the court below went on considering the documents relied upon by the respondent no.7 in terms of the direction passed by the coordinate Bench as contained in order dated 20th November, 2019 and expressed *prima facie* satisfaction on consideration of those documents that it is a fit case to implead respondent no.7 as defendant no.7 in the pending suit and allowed the application under Order 1 Rule 10(2).

This Court is *ad idem* with the view expressed by the court below as reflected from the impugned order dated 7th January, 2022 which has been passed pursuant to the order passed by a

coordinate Bench on 20th November, 2019.

It also does not escape notice of this Court that position of defendant nos.1 & 2 is akin to petitioner/plaintiff no.2. All three are two sons and one daughter of late Panchanan Chakraborty. Therefore, addition of respondent no.7 as defendant in the pending suit would definitely and adversely affect interest of the defendant nos.1 & 2 since in the suit declaration has been prayed for over a Debottar Estate. In spite of these facts, defendant nos.1 & 2 did not raise any demur against the respondent no.7 while the court below adjudicated the application under Order 1 Rule 10(2). This aspect has been repeatedly expressed by the court below in the orders passed on the application of the respondent no.7.

In above conspectus, this Court does not find any merit in the present case and accordingly, the revisional application stands dismissed.

(Saugata Bhattacharyya, J.)