

DL. April 19,
22. 2022

F.A. 23 of 2021

Sri Kiriti Bhusan Mukherjee
Vs,
Smt. Tupurani Mukherjee & ors.

Ms. Prajaaini Das,
...for the appellant.

Mr. Sobhan Majumdar,
...for the respondents no. 1(b) and 1(c).

Re: CAN 1457 of 2020 (injunction)
filed on February 11, 2020.

Although the matter is appearing under the heading “application”, by consent of the parties the appeal itself is taken up for consideration upon dispensation of all formalities.

The instant suit for partition was dismissed on the ground of non-joinder of necessary parties. It appears from the record that the suit plot nos. 3433 and 3537 were recorded in the names of eight (8) co-sharers, who have not been impleaded as defendants in the suit.

The learned advocate appearing on behalf of the appellant submits that the trial court would have given leave to the plaintiff/appellant to amend the plaint in order to bring on record the other co-sharers.

We are unable to accept such submission advanced on behalf of the appellant in view of the facts that the documents already filed on evidence clearly reveal that the said eight co-sharers have not been impleaded and that the contesting defendants have taken a specific point in their written statement that the suit is bad for non-joinder of necessary parties.

We do not find any reason to interfere with the judgment and order passed by the learned trial judge. However, dismissal of the partition suit on the ground of non-joinder of necessary parties would not prevent the plaintiff/appellant to file a fresh suit for partition by impleading all the co-sharers. Since the trial court has not decided the other issues on merits, all such issues may be raised at the trial of the fresh suit, if filed, and the order of dismissal of the instant suit would not operate as res judicata in respect of other issues raised in Title Suit No. 69 of 2014.

The appeal and the connected application for injunction, thus, stand disposed of.

There will be no order as to costs.

dns

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)