

(04)
04.01.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
(Via Video Conference)

CO No. 913 of 2018
Prabin Kharel
-versus-
Bijay Kumar Sah & ors.

Mr. Probal Kumar Mukherjee,
Mr. Suhrid Sur, ... for the petitioner.

Mr. Amales Ray, ... for the opposite party.

The revisional application is defective as the added parties to the suit have not been impleaded as parties to the application.

However, leave is granted to Mr. Suhrid Sur, learned advocate-on-record for the petitioner, to remove the said defect by adding the said left-out parties as opposite party nos. 2 to 5 in the present revisional application.

Service of notice of the present revisional application upon the said added opposite parties is dispensed with on the prayer of Mr. Probal Kumar Mukherjee, learned senior advocate and at the risk of the petitioner.

The defendant in a suit for specific performance is the petitioner of the present application under Article 227 of the Constitution of India which is directed against the Order no. 30 dated December 4, 2017 passed by the learned Civil Judge (Senior Division) at Siliguri in the said suit being Title Suit No. 130 of 2013.

The learned Trial Judge by the order impugned has allowed an application filed by the plaintiff/opposite party under Order I Rule 10(2) of the Code of Civil Procedure.

The grievance of the petitioner is that the said application was allowed without giving an opportunity to him to contest it.

Mr. Mukherjee submits that since the order of injunction restraining the defendant from transferring and/or alienating the suit property has already been vacated for the default of the plaintiff to comply with the condition of the said order of injunction, there was no bar to transfer the suit property, as such, the defendant has transferred a part of the suit property to the added parties but the defendant could not bring the said fact on record as he was not even given an opportunity to file written objection to the said application.

Mr. Amallesh Roy, learned advocate for the plaintiff/opposite party submits that the parties added are transferees pendente lite, as such, necessary parties to the suit.

Having heard the learned counsel for the parties and on perusal of the materials-on-record, it appears that the learned Trial Judge has allowed the said application without affording an opportunity to the defendant to contest the said application by filing written objection; that apart, the order impugned is bereft of any reason.

Therefore, the order impugned is not sustainable and is accordingly set aside. The said application is required to be heard afresh, after giving the defendant an opportunity to file written objection to the said application.

It is however made clear that this Court has not gone into the merit of the said application.

The learned Trial Judge is requested to dispose of the said application as expeditiously as possible

in accordance with law, preferably within a period of four available effective working weeks of the said Court from the date of communication of this order.

C.O. 913 of 2018 is disposed of with the above terms without any order as to costs.

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

(Biswajit Basu, J.)