

18.04.2022  
Item No.14  
Ct. No.7  
CHC  
(disposed of)

**C.O.821 of 2022  
(Physical Hearing)**

**Enat Ali  
Vs.  
Sk. Jakir Hossain & ors.**

Mr. Amitabha Ghosh,  
Ms. Nabanita Chatterjee,  
Sk. Sujauddin  
...for the petitioner

Mrs. Sohini Chakraborty,  
Mr. Koustav Bagchi,  
Mr. Debayan Ghosh  
...for the opposite party nos. 1 to 9

The subject-matter of challenge in this revisional application is against the rejection of a prayer for plaint under Order 7 Rule 11 C.P.C, filed by petitioner/defendant no.1.

Mr. Amitabha Ghosh, learned advocate appearing for the petitioner upon adverting to paragraph-‘5’ and paragraph-‘10’ of copy of the plaint, annexed with the instant revisional application, submits that the suit had been instituted making defendant nos.2 and 3 as parties in this case, who are no more available in this world.

As per averments contained in the plaint, the dead persons can never take part in the alleged threatening process for raising construction on some advantageous portion of the scheduled property. Since the averments

contained in the plaint were sufficient to reveal that the partition suit has been instituted impleading some dead persons, and more so, cause of action necessary for the suit can never be disclosed justifying suitable action therefor.

Per contra, Mrs. Chakraborty, learned advocate representing the opposite parties/Caveators submits that upon reading each and every paragraph of the plaint, it would be sufficient enough to disclose cause of action.

It is thus contended by Mrs. Chakraborty that mere giving an isolated look to paragraph-‘5’ and paragraph-‘10’ of the plaint would not be sufficient enough to reveal the cause of action.

According to opposite parties, what is necessary in this case is to comprehend each paragraphs of the plaint to find out the cause of action for the suit.

While raising objection, Mrs. Chakraborty has supported the order of the learned court below, and submits that there is nothing to interfere with the order impugned.

Having considered the submission of both sides, it appears that it is a suit for partition impleading some persons, as defendants. Out of such defendants, some of the defendants are no more available in this world. Impleading some dead persons together with some persons still alive would not necessarily leave materials

to seek for rejection of the plaint taking the plea of absence of cause of action. Since it is a partition suit, wherein share of the parties including the defendants are necessary to be determined by the court below after holding trial.

In view of the nature of the suit, the legal heirs and/or representatives of the dead persons, impleaded as defendants, are necessary to be impleaded in aid of the provisions available in the Code of Civil Procedure.

The impugned order as such does not call for any interference. This would not, however, prevent the petitioner from raising a plea before the court below as to the defects of the parties, if there be any, and if any such plea pertaining to the party defect is raised, the same shall be addressed to by the learned court below to resolve the same in accordance with the provisions of the law, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

It is learnt that application for temporary injunctions coupled with a separate application under Order 39 Rule 4 C.P.C. is pending for decision, to be rendered by the learned court below.

Learned court below is thus requested to ensure expeditious disposal of injunction application including the application filed by the defendants for making

variation and/or alteration of the ad interim order of injunction together with separate application filed by the opposite parties under Order 1 Rule 10 C.P.C.

With this direction and observation, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

**(Subhasis Dasgupta, J.)**