

. 21.2.2022

Ct. No.21

DL 1

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C.O. 685 of 2021

Sri Kanu Gopal Das & Ors.

-VS-

Siddhartha Krishna Das @ Shital Das & Ors.

(Through Video Conference)

Mr. Susenjit Banik,

Mr. Srikanta Dutta,

Mrs. Sutapa Mukhopadhyay

...for the Petitioners.

Mr. Sayantan Basu

Mr. Abhiroop Dhar

...for the Opposite Party no.1.

Mr. Arjun Mukherjee

Mr. Probal Sarkar

.... for Opposite parties Nos. 4,5,7,8,9 & 10.

The present application under Article 227 of the Constitution of India is at the instance of the defendants nos. 2,3 (ka) and 3 (kha) of Partition Suit No. 169 of 2005 (renumbered as 420 of 2015) being aggrieved by rejection of their amendment petition dated 30.11.2019 by learned Civil Judge (Senior Division) Lalbagh, Murshidabad.

The facts necessary for determination of the present revisional application in gist is that the properties in respect of which partition has been sought was owned by Aditya Chandra Saha. Who during his lifetime bequeathed his properties by executing a will on 11.8.1950 in favour of Rabindranath Das (deceased defendant no.1) and Kaliprasad Das predecessor in interest of O.P no.6 and 7. Nilmoni Das father of the beneficiaries was the executor of the will.

Nilmoni Das had five sons namely Kaliprasad, Rabindranath, Kanu Gopal, Siddhartha Krishna and Nemai Chandra. Thus plaintiff Siddhartha Krishna happens to be one of the sons of Nilmoni. The original defendant nos. 1, 2 and 3 namely Rabindranath, Kanu Gopal and Nemai happen to be the other three sons of Nilmoni. The original defendant nos. 4 to 8 happens to be the legal heirs of Kaliprasad the other son of Nilmoni.

It is the case of the plaintiff that his two brothers Rabindranath and Kaliprasad gifted him 35/168 shares in their property by executing a gift deed dated 11.7.1990. That defendant nos.2 and 3 the other two brothers of Rabindranath and Kaliprasad have acquired interest in the suit property by virtue of purchase.

Now, by filing impugned amendment petition the defendant nos. 2 and legal heirs of deceased defendant no.3 Nemai Chandra wanted to bring on records the facts and documents that Rabindranath and Kaliprasad transferred certain portion of their properties to their other brothers including the plaintiff by virtue of gift deeds and not by deed of conveyance. That during the pendency of the suit the deceased defendant No.1 Rabindranath gifted his properties to his two sons who have not been impleaded in the suit.

It is true that petitioners have filed the amendment petition seeking amendment in their W.S almost 12 years after filing of the W.S and after the commencement of the trial. That as per proviso of Order 6 Rule 17 C.P.C no parties should be allowed to amend their pleadings after commencement of the trial unless the party can show in spite of due diligence the matter could not be raised before the commencement of trial.

In the present case parties happen to be legal heirs of Nilmoni. But, it was not Nilmoni who was the owner of the suit property rather, his two sons namely Rabindranath and Kaliprasad by virtue of probated will. It has also come on record that Rabindranath and Kalipada gifted some of their properties in favour of their three brothers.

Therefore, the fact how and on what basis the other brothers of Rabindranath and Kaliprasad acquired interest in the suit property need to be brought on record as the case is for Partition of the properties which was originally owned by Aditya Chandra Saha. Further, if this court is to believe that Rabindranath and Kaliprasad did not give any shares in their properties acquired by virtue of will and then it is not known why the plaintiff has impleaded the other brothers and legal heirs of deceased brothers of Rabindranath & Kaliprasad as parties or his co-shares in the suit for partition.

It is settled principle of law that in a partition suit all the joint properties of the co-sharers need to be brought into the hotchpotch. That while deciding the shares of the co-sharers and proper allocation and allotment of shares the documents on the basis of which the co-sharer claims interest in the suit properties need to be taken into consideration before passing of a preliminary decree and in order to avoid multiplicity of the suit. Therefore, this Court holds that proposed amendment is necessary for proper determination of the partition suit which the petitioners have failed to incorporate in their W.S before commencement of the trial for proper determination of their share in the disputed properties. Therefore, order impugned is set aside.

That apart the plaintiff / opposite party no.1 is directed to bring on record the legal heirs of deceased defendant no.1 who also appears to be co-sharers in the suit property.

The amendment petition is allowed. The petitioners are directed to file amended W.S within a week from the date hereof failing which the impugned order stands. The learned Court below is directed to dispose of the suit within six months as same is pending since 2005 without granting any adjournment whatsoever to either of the parties.

Accordingly C.O No. 685 of 2021 is allowed.

Accordingly all connected applications, if any, shall stand dismissed.

Interim order, if any, stands discharged.

There will be no order as to cost.

No affidavits are invited. Allegations made are deemed to be denied.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)