

6.9.2022
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Ct. no. 652
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C.O. 1167 of 2019

Smt. Saroj Agarwal
Vs.
Smt. Kalidassi Das & Ors.

Mr. Debdut Mukherjee ...for the petitioner

Being aggrieved and dissatisfied with the impugned order dated 22nd February, 2019 passed by the Civil Judge (Senior Division), 2nd Court, Barasat in Title Suit no. 98 of 2011, petitioner herein preferred this application under Article 227 of the constitution of India.

The petitioner contended that the petitioner previously filed a suit against the opposite party being title suit no. 95 of 1994 in the court of learned Assistant District Judge, 2nd court, Barasat praying for *inter alia* specific performance of an agreement for sale dated 3rd March, 1992 since the opposite parties had refused to execute or register the necessary conveyance in respect of the suit property in favour of the petitioner.

In the said suit one Dilip Jaiswal and one Lakhi Debi Jaiswal (in short Jaiswal) have made an application under Order 1 rule 10 of the Code of Civil Procedure (hereinafter referred to CPC) for adding themselves in the suit on the basis that the opposite party herein had also entered into a purported agreement for sale of the suit

property with the said Jaiswals and such application was allowed. Said suit being TS 95 of 1994 subsequently transferred to the High Court and renumbered as extraordinary suit no. 1 of 1999 On 3rd October, 1997. The opposite parties wrongfully and illegally purported to sell the suit property to Jaiswals by executing a deed of conveyance and after executing such deed, the Jaiswals did not pursue the suit filed by the Jaiswals.

The High Court at Calcutta was pleased to pass an order dated 28th March, 2001 granting leave to the petitioner to amend the plaint of the said suit to include appropriate prayers for inter alia execution of the deed of conveyance dated 3rd October, 1997 purportedly executed by the opposite parties in favour of the Jaiswals and by the judgment and decree dated 10th April, 2001, the High Court was pleased to grant inter alia a decree of specific performance of the aforesaid agreement in favour of the petitioner. In the said judgment and decree, the High Court was pleased to pass a decree of cancellation of the purported deed dated 3rd October, 1997 executed by the opposite party in favour of the Jaiswals and directed the opposite party to execute and register the deed of conveyance in respect of the suit property in favour of the petitioner. Such decree was never appealed against and it is binding upon the parties. On the failure of the opposite parties to comply with the said decree, the learned Registrar, Original Side, High Court,

Calcutta duly executed and registered the appropriate deed of conveyance in favour of the petitioner in respect of the suit property and by the said judgment, and decree, the opposite parties were restrained by decree of perpetual injunction from ousting the petitioner from the said property. As the opposite party along with anti-social elements forcibly trespassed to the suit property by ousting the petitioner from the physical possession of the suit property thereof, the petitioner constrained to institute the present Title suit no. 98 of 2011 praying for decree of Khas possession and injunction.

During pendency of the aforesaid suit, the said Jaiswals namely Dilip Jaiswal and Lakhi Debi Jaiswal filed an application in or about July, 2017 for being added in the said Title suit no. 98 of 2011 in defendant category, claiming ownership in the property on the strength of said purported deed of conveyance dated 24th February, 1998 which was cancelled by the aforesaid decree of High Court on 10th April, 2001 passed in extraordinary suit no. 1 of 1999 in which the said Jaiswals were parties.

The present petitioner filed objection before the trial court and apprised the trial court about the factum of cancellation of the deed of conveyance on the basis of which the Jaiswals has made the application for addition as a party. But unfortunately by the impugned order dated 2nd February, 2019, the learned court below was

pleased to allow the said application under 1, Rule 10 C.P.C. filed by the said Jaiswals and allowed them to be added as parties and directed the plaintiff to amend the cause title accordingly.

In spite of service of the revisional application, the opposite parties are not represented.

It is fundamental that plaintiff is the *dominus litus* of a suit. The Court is not supposed to add a person as a defendant in a suit, as a rule, specially when plaintiff is opposing such addition. The reason behind is that plaintiff is the master of the suit. He cannot be compelled to fight against whom he has not claimed any relief.

The principle behind impleading a third party to a proceeding is mainly for avoidance of multiplicity of proceeding and accordingly court has no jurisdiction to add a party unless he is a necessary or proper party.

In the present case, in the petition for addition of parties, said Jaiswals namely, one Dilip Jaiswal and one Lakhi Debi Jaiswal has stated that they have become owner of suit property by dint of deed No. 1166 and as such prayed for adding them as necessary party. However, the opposite party have specifically mentioned in their objection that though the deed no. has been correctly stated as 1166 but the deed is actually dated 3rd October, 1997. It further appears from the order of this court dated 10.04.2001 that the said deed no. 1166

has been declared as cancelled and accordingly it also appears from certified copy that the fact of cancellation of said deed, in terms of order of High Court has been duly noted in the concerned Register of Registry office.

In view of the above, it clearly shows that the petitioners have suppressed that the deed no. 1166 by which they have claimed ownership in the suit property has been cancelled by the High Court and by dint of that cancelled deed they have prayed for adding them as necessary party in the said suit. In view of above the petitioners of said application under order 1, Rule 10 C.P.C. are neither necessary party nor proper party and therefore there is no requirement that the suit should be heard or disposed of in their presence.

Having considered the facts and circumstances of the case, the order no. 60 dated 22.2.2019 passed by the learned Civil Judge (Senior Division), 2nd court, Barasat, North 24 parganas in title suit no. 98 of 2011 is hereby set aside.

The matter is pending since long, the trial court is requested to make all endeavour for expeditious disposal of the suit and to conclude the entire proceeding of the suit, preferably within a period of 10 months from the date of the communication of this order.

Accordingly, C.O. 1167 of 2019 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)