

Item No.05
28.11.2022
suman
Ct..652

C.O. 1045 of 2021

Smt. Hansa Agarwala
-versus
Mr. Kaushal Bhotika and Anr.

Mr. Aniruddha Chatterjee
Ms. Sudeshna Basu Thakur
..for the petitioner

Md. Younush Mondal
..for the proforma O.P.

Being aggrieved and dissatisfied with the order dated 05.12.2019 passed by the learned Civil Judge (Senior Division), 7th Court at Alipore in Title Suit No.308 of 2016 the present revisional application has been preferred.

The petitioner contended that the petitioner as plaintiff filed a suit for eviction of licensee against the opposite party Mr. Kaushal Bhotika. After receipt of summons said opposite party did not appear and the suit is posted for ex parte hearing. Suddenly one Nitu Tewari being the proposed opposite party herein filed a petition with a prayer for adding her as a party by filing an application under Order I Rule 10(2) of the Code of Civil

Procedure. The present petitioner /plaintiff filed written objection against the said application. she has prayed for adding her as a party in the suit on the ground that she entered into an "agreement for sale" with the plaintiff and on the strength of said agreement she has acquired a right to be added as a party. Learned Court below upon hearing was pleased to allow the said application under Order I Rule 10(2) of the Code filed by said Nitu Tewari.

Mr. Aniruddha Chatterjee, learned counsel appearing on behalf of the petitioner submits that the impugned order suffers from gross illegality and material irregularities and has been passed without conformity with any legal provision. This is a suit for eviction of licensee and Nitu Tewari wants to enforce her right over the said property by way of addition as a party to the suit by virtue of an agreement for sale.

Md. Younush Mondal, learned advocate appearing on behalf of the said proposed opposite party submits that she is in actual possession of the property in question and the plaintiff intentionally did not implead her

as a party in the suit. In fact, the plaintiff executed an agreement for sale on 23.05.2011 and she paid a sum of Rs. 15 lakhs as total consideration money in respect of the suit premises and accordingly, said Nitu Tewari is possessing and enjoying the suit property since 23.05.2011. in fact it appears from the notice dated 09.08.2016 that said notice was issued to both koushal Bhatika/ defendant and also to proposed defendant Nitu Tewari jointly. She has every right, title, interest and possession over the suit premises and, accordingly, for adjudication of the real controversy between the parties in the present suit, her presence is required.

Having considered the facts and circumstances of the case it appears that Ms. Nitu Tewari has claimed herself to be added as a party on the basis of an alleged agreement for sale dated 23.05.2011.

Needless to say that by executing an agreement for sale no title confers upon a party nor it extinguishes title of the owner. In the plaint plaintiff specifically pleaded that he is the owner of suit property and he allowed

defendant Mr. Kaushal Bhatika to occupy the suit premises as a licensee on temporary basis. In the plaint plaintiff nowhere stated that licence was granted to present proposed opposite party/proposed defendant.

As a rule the court should not add a person as a defendant in a suit where the plaintiff has opposed to such addition. The reasons behind is that the plaintiff is the dominus litis of the suit. He is the master of the suit and he cannot be compelled to fight against whom he has not claimed any relief. The principle for impleading a third party to a proceeding is for avoidance of multiplicity of proceedings and as such the court has no jurisdiction to add a party unless it is necessary or proper party. A necessary party is one without whom no order can be made effectively and a proper party is one whose presence is necessary for a complete and final decision on the question involved in the proceeding. In the present case as according to plaint plaintiff has granted licence to defendant and prayed for his eviction in the proceeding, so proposed opposite party is neither a necessary party nor a proper party

for complete and final adjudication on the questions involved in the suit.

Accordingly, I do not find any merit or substance in the said prayer for adding Nitu Tewari as a party in the suit.

Accordingly, the order impugned dated 05.12.2019 is set aside.

C.O. 1045 of 2021 is, accordingly, **allowed.**

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

(Ajoy Kumar Mukherjee, J.)