

25.08.2022
Item No.18
Ct. No.7
CHC
(disposed of)

C.O.1790 of 2022

**Shri Ayush Bagla
Vs.
Sanjiv Nandan Sahaya & ors.**

Mr. Dwaipayan Basu Mallick,
Ms. Somi Ojha
...for the petitioner

Mr. Siddhartha Banerjee,
Mr. Arkaprava Sen,
Ms. Sambrita B Chatterjee
...for the proforma opposite
party not.1 &2.

Mr. Gopal Pahari,
Ms. Mandeep Kaur
...for the opposite parties

The subject-matter of challenge in this case is against the order dated 2nd June, 2022, passed by the learned Civil Judge (Senior Division), 1st Court, at Alipore, South 24 Parganas, in Title Suit No.775 of 2020, rejecting the petition seeking deletion of a party (defendant no.3) under Order 1 Rule 10(2) C.P.C..

Learned advocate appearing for the petitioner advertng to some of the paragraphs of the plaint submits that there is no single whispering in plaint revealing the role played by the petitioner (defendant no.3) together with his interest, if there be any, pertaining to the suit property mentioned in the schedule to the plaint.

It is contended by petitioner that omnibus allegation has been attributed against the petitioner, for which, he is neither a necessary party, nor a proper party in this case.

In the previous suit, in which there has been a decree granted for recovery of possession, petitioner was not a party to that previous suit, learned advocate for the petitioner argues.

It is thus also submitted that the court below has not gone into the points raised in the petition specifically disclosed in paragraph-‘4’ of the petition, filed by the petitioner under Order 1 Rule 10(2) C.P.C.

Per contra, learned advocate appearing for the opposite parties submits that this is a purely a suit for injunction, and there has been sufficient reflection disclosed in the relevant averments of the plaint as regards his purported role to the case.

Supporting the order of the court below, learned advocate for the opposite party no.1 submits that there lies nothing to be adjudicated afresh. There lies nothing to be interfered with.

Having considered the submission of both sides, it appears that bone of contention between the parties is on a sole point, as to whether defendant no.3 is a proper party or necessary party in this litigation, which is basically a suit for injunction.

As per submission disclosed by the opposite party no.1, the written objection filed by the opposite party No.1 against the prayer under Order 1 Rule 10(2) C.P.C. has not been filed with the instant revisional application, and which has been strategically suppressed for the purpose best known to the petitioner.

The court below, has not properly gone into the question raised in this case as to whether petitioner is a necessary party, or proper party in this case, in context with the points raised in paragraph-‘4’ of the petition under Order 1 Rule 10(2) C.P.C. together with written objection filed by the opposite parties.

There is no finding reached by the court below in the order impugned categorising the status of the defendant npo.3 as to whether he is necessary party, or proper party in this case, or unnecessary party.

In a situation is like this, the decision so far returned by the court below by the order impugned, with regard to the prayer for deletion of the party under Order 1 Ruel 10 (2) C.P.C. cannot be construed to have been properly reached in terms of the proposition of the law.

The revisional application stands disposed of upon setting aside the impugned order, dated 2nd June, 2022, passed in Title Suit No.775 of 2020, with a direction upon the court below to hear out the same

afresh, giving a hearing to both sides in context with the points disclosed in paragraph '4' of the petition under Order 1 Rule 10(2) C.P.C. together with written objection filed by the opposite parties, preferably within a period of eight (08) weeks from the date of communication of this order.

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

Petitioner is directed to make communication of this order to the learned court below.

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.)