

25.02.2022
SL No.9
Court No.8
(gc)

**FA 134 of 2019
With
CAN 1 of 2019
(Old No: CAN 6994 of 2019)**

**Tabu Sekh
Vs.
Amena Bibi & Ors.**

(Via Video Conference)

Mr. Partha Pratim Roy,
Mr. Sarbendu Singh,
...for the Appellant.
Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee,
...for the Respondent Nos. 1 to 13.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The plaintiff/appellant filed a partition suit. Admittedly, the suit was filed without impleading necessary parties. However, when this was pointed out by the defendants in the written statement, the plaintiff, during the pendency of the suit, filed an application bringing other co-sharers in the suit and suit for addition of party was allowed on 10th February, 2012. Although none of the parties have argued for dismissal of the suit due to non-joinder of necessary parties but the Court while hearing the suit and going through the materials on record noticed that the share of one of the son of Kalandar Sheikh, i.e., Afsar Sheikh and two daughters Bilkesh and Golzan have not been impleaded in the pleadings and the

evidence on record would not show that these three persons either relinquished their share or transferred to any other co-sharers. It is elementary that in a suit for partition, every co-owner has an interest over every inch of the property unless it is partitioned.

We have gone through the materials on record and we do not find any reason that there is a specific mention of relinquishment of the share or interest of the said three persons in favour of any other co-sharers. The learned Trial Court has also recorded that the plaintiff did not make any effort to implead the said persons or the legal heirs as party to the suit in spite of giving repeated opportunities. Since non-joinder of the said parties are fatal to the suit, we do not find any reason to interfere with the order passed by the learned Trial Judge.

At this stage, Mr. Partha Pratim Roy, learned Counsel appearing on behalf of the plaintiff/appellant has made a prayer for giving an opportunity to the plaintiff to approach the learned Trial Court with an application for impleading Afsar Sheikh, Bilkesh and Golzan in the suit. We feel that instead of arising unnecessary complicated issue, a fresh suit can be filed by the plaintiff against the defendants as also against the three persons who were left out in the earlier proceeding.

The order of the learned Trial Judge is confirmed.

The appeal being FA 134 of 2019 and the application being CAN 1 of 2019 (Old No: CAN 6994 of 2019), accordingly, stands dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)