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C.O. 2265 of 2022

Sushila Mishra & Anr.

Vs.

Chandan Sahu & Anr.

With

C.O. 2266 of 2022

Sushila Mishra & Anr.

Vs

Nirmal Ghosh & Anr.

Mr. Animesh Paul,

... For the petitioners.

Ms. Baisali Ghoshal

... For the opposite parties.

On the prayer of both the parties, these two revisional applications are taken up together for a common law point being involved in this case.

The only difference between two revisional applications is that in C.O. No.2265 of 2022, though husband was impleaded but, the wife standing in the same footing with respect to the subject property left unjoined, while in C.O. No.2266 of 2022, though father was joined, but his son remained unjoined in respect of the subject property, wherefrom father has been sought to be evicted upon describing him to be trespasser.

The subject matter of challenge is against the addition of party under Order 1 Rule 10 (2) of the Code of Civil Procedure in a suit for eviction of trespasser.

Mr. Animesh Paul, learned advocate appearing

for the petitioners while assailing the impugned orders dated 6th July, 2022, passed in Title Suit No. 138 of 2019, by learned Civil Judge (Junior Division), 4th Court, Howrah, and order dated 14.07.2022 passed in Title Suit No. 137 of 2019 by learned Civil Judge (Junior Division), 4th Court, Howrah, submits that impugned decision in connection with a prayer for addition of party, has been given by court below upon prejudging the suit, with an observation that in the event of the decree being granted, the same may not be executed in the absence of the party, sought to be added in this case, and such observation would influence the final decision of suit, and it is not at all necessary.

It is also contended by the petitioner that party sought to be added is neither a necessary party, nor a proper party, and thus impleadment of such added party would be an unnecessary exercise merely for pre-judging the suit.

Reliance is placed on such issue by learned advocate for the petitioners on a decision reported in **AIR 1984 Calcutta 228** delivered in the case of **B. K. Dutta vs. Sm. Nita Madan & anr.** to submit that party sought to be added has been improperly impleaded, which was no longer necessary for the fair adjudication of the matter in controversy between the

parties.

The referred judgement came to be pronounced in an eviction suit of tenant, wherein tenancy was admitted, and in context therewith some other person, other than impleaded one, was felt unnecessary.

The decision, in the given context of this case, is factually distinguished.

Further reliance is placed upon by the learned advocate for the petitioners, reported in **97 CWN page 735** delivered in the case of ***Chakraberia Sishu Sangha vs. Sibaji Dutta & ors.***, to submit that in view of the proposed addition of party, the court would be unnecessary put to decide the title of the subject-property, wherefrom the trespasser/defendant has been sought to be evicted, and as such it was no longer necessary in the instant case.

The referred judgement appears to be factually distinguished from the facts and circumstances of the case. More so, there will be no new cause of action introduced by the proposed addition.

Ms. Baisali Ghoshal, learned advocate appearing for the opposite parties/Caveators disputes with the submission alleging that the subject property, from which defendants have been sought to be evicted upon describing them to be trespassers, such subject property was jointly owned being co-purchasers, and

as such, presence of such party is felt necessary, as a proper party, to adjudicate the matter in controversy between the parties.

Regarding the applicability of the judgement, Ms. Baisali Ghoshal, learned advocate appearing for the opposite parties submits that such citation would be without any relevance in the given context of this case for the present purpose of this case.

Having considered the submission of both sides, it appears that co-purchaser/joint-owner of the defendant remained unimpleaded in a suit for eviction of a trespasser with respect to subject property, which stands in the joint name of defendant with another co-purchaser.

It is thus, such co-purchaser of the defendant has some caveatable interest in the subject property, and without the impleadment co-purchaser, there may not be any fair adjudication of the controversy surfaced between the parties at rest.

Upon exercising discretion in accordance with law, the court below felt it necessary that the person sought to be added was a proper party, and presence of added party would help the court below to render appropriate decision, upon deciding the controversy between the parties.

By the proposed addition, there may not be any

new cause of action to be introduced, in the pending litigation.

The status of the proposed added party in any case cannot be better than the defendant, who has already been described to be a trespasser, from subject property, which is found to be jointly purchased in the name of defendant with another, proposed to be added.

With the observation made hereinabove, the impugned orders do not call for any interference.

Both the revisional applications fail.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)