

02.09.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.2475 of 2022

Smt. Madhurima Basu & ors.

Vs.

Smt. Maitrayee Ghosh & ors.

Mr. Sarathi Dasgupta,
Ms. Pritha Bhaumik

...for the petitioners

Mr. Srinjay Sengupta,
Mr. Saurav Roy,
Mr. Narattom Acharjya,
Mr. Ankush Ghosh

...for the o.p. Nos.17 & 18

Petitioners assail order dated 22nd July, 2022, passed by learned Civil Judge (Senior Division), 9th Court, at Alipore, South 24 Parganas, in Title Suit No.284 of 2015 allowing transposition of defendant nos.1 and 2 to the category of plaintiffs in the said suit.

Ms. Pritha Bhaumik, learned advocate appearing for the petitioners (defendant nos.3, 9 and 10) submits that prayer for transposition has been allowed by the court below in a suit for partition in that extending an opportunity of hearing not only to the plaintiffs, but also to the petitioners/defendant nos.3, 9 and 10.

It is contended by the learned advocate for the petitioners that the impugned order is not sustainable for violation of the natural justice, conspicuously what is demonstrated in the order impugned.

Per contra, Mr. Srinjay Sengupta, learned advocate appearing for the opposite party nos.17 & 18/defendant nos.1 and 2 submits that the court below has allowed the transposition of defendant nos.1 and 2 to the category of plaintiffs, for the inaction exposed by the plaintiffs since long time past, as well as for absence of any divergent/conflicting interest of petitioners with that of plaintiffs in a suit for partition.

Learned advocate for the opposite party nos.17 &18 supporting the order of the court below submits that in a suit for partition, petitioners have been taking steps to grab the suit property illegally by entering into a development agreement with third party, and in a situation like this, transposition was felt necessary, which has been rightly considered by the court below.

Having considered the submission of both sides, it appears that the prayer for transposition was allowed for not taking any steps by the plaintiffs from long before, and also in the absence of learned advocate representing defendant nos.3, 9 and 10 in the court below though Hazira was filed for such defendants.

The copy of the proposed transposition was served upon the learned advocate representing defendant nos.3, 9 and 10.

For the inaction, or long absence of the plaintiffs, there are provisions mentioned in the Code of Civil

Procedure, which may be resorted to in an appropriate case being established therefor.

When there was no opportunity of hearing extended either to the plaintiffs or to the defendant nos.3, 9 and 10, this Court is of the view that the impugned order is not sustainable.

The revisional application stands disposed of upon setting aside the order dated 22nd July, 2022, with a direction upon the court below to hear out the same afresh providing sufficient opportunity of hearing, not only to the plaintiffs but also to defendant nos.3, 9 and 10 or their learned advocates representing them in the court below.

This would not however, prevent the court below to issue a notice from the end of court below upon the plaintiffs furnishing intimation about the date of fresh hearing, to be suitably fixed before the court below, preferably within four (04) weeks from the date of communication of this order.

Parties are directed to make communication of this order to the 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.)