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14.03.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 3029 of 2019

Sabir Mondal
-versus-
Ujjala Bibi & ors.

Mr. Joy Chakraborty,
Mr. Sandip Dinda, ... for the petitioner.

Despite service, none appears on behalf of the opposite parties.

The present revisional application under Article 227 of the Constitution of India is at the instance of the defendant no. 7 in a suit for declaration of title and injunction which is directed against the order dated August 01, 2019 passed by the 1st Court of learned Civil Judge (Junior Division) at Barasat, District : 24 Parganas (North) in Title Suit No. 394 of 2019.

The petitioner in anticipation of an order of injunction to be passed in any suit that may be filed, lodged a caveat against one Abdul Rahaman Mondal.

The said Abdul Rahaman Mondal being the plaintiff no. 2 along with other opposite parties filed the connected Title Suit and obtained an ad interim order of injunction against the petitioner without serving the copy of the application for injunction to the learned advocate who lodged the aforesaid caveat on his behalf.

The petitioner complaining such non-service of the copy of the application upon his learned advocate filed an application for vacating the said ad interim order of injunction.

On the date of hearing of the said application, the plaintiffs prayed that the name of said Abdul Rahaman Mondal may be expunged from the cause title of the said suit as he was wrongly added as plaintiff no. 2.

The learned Trial Judge by the order impugned has allowed the said prayer of the plaintiffs holding that at paragraph 5 of the plaint, it has been stated that one of the sons of Abdul Gafur Mondal since is out of station has not been made party to the suit, as such, there is ample room to believe that the name of said 'Abdul Rahaman Mondal' has been inadvertently typed in the cause title of the plaint and in view of the said finding the learned Trial Judge has dismissed the application filed by the petitioner with a further finding that the caveat lodged by the petitioner has no force.

Admittedly, the said Abdul Rahaman Mondal was the plaintiff no. 2 when the application for injunction was moved. The plaintiffs in paragraph no. 5 of the plaint have stated that one of the sons of Abdul Gafur has not been made party, it is not the case of the plaintiffs that they have impleaded a wrong person as plaintiff no. 2.

A valid caveat against the plaintiff no. 2 was on record as on the date of grant of the ad interim order of injunction. The Court under Section 148(3) of the Code of Civil Procedure is obliged to ensure service of copy of the application for injunction upon the caveator before grant of any order of injunction.

Subsequent steps to delete the name of the party to the suit against whom the said caveat was lodged will not make the irregularity in grant of the ad interim order of injunction good.

The order impugned, for the aforesaid reasons, is set aside.

The learned Trial Judge shall decide the application filed by the petitioner for vacating the ad interim order of injunction first and till such time shall not entertain the prayer of the plaintiffs for extension of the said ad interim order of injunction.

C.O. 3029 of 2019 is allowed with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)