

S/L 11
12.04.2023
Court. No. 12
Suwayan

CO 410 of 2019

**Smt. Kalyani Ghosh & Ors.
Vs.
Nabin Chandra Ghosh & Ors.**

Mr. Anit Kumar Rakshit

...for the petitioners.

Learned Advocate for the petitioners is present.

The two affidavit-of-service and one supplementary affidavit as filed on behalf of the petitioners be taken on record.

Since none appears on behalf of the opposite parties, this Court proposes to proceed with the instant matter in absence of the opposite parties.

Heard Mr. Rakshit, learned Advocate for the petitioners at length.

The present case is now taken up for passing appropriate order.

In this revisional application as filed under Article 227 of the Constitution of India the Order No. 275 dated December 19, 2018 as passed by learned Civil Judge (Junior Division), Additional Court, Cahndernagore, Hooghly in Title Suit No. 810 of 2014 has been assailed.

By the impugned order learned Trial Court allowed some third parties' application under Order 1 Rule 10 of the Code of Civil Procedure and, thus, directed the said third parties to be impleaded as defendant Nos. 2 to 10 in the said Title Suit No. 810 of 2014. The plaintiffs felt

aggrieved and, thus, preferred the instant revisional application.

In support of the instant revisional application learned Advocate for the plaintiffs/petitioners at the very outset draws attention of this Court to the supplementary affidavit as filed before this Court. Attention of this Court is also drawn to the annexures to the said supplementary affidavit.

It is contended by Mr. Rakshit, learned Advocate for the substituted plaintiffs/petitioners that right, title and interest of the predecessors of the proposed added parties in respect of the suit property has already been decided in Title Suit No. 175 of 1977 by the 1st Court of Munsif at Chandernagore which would be evident from the photocopy of the judgment and decree as passed in Title Suit No. 175 of 1977 and which has been annexed with the supplementary affidavit. It is contended since in Title Suit No. 175 of 1977, the predecessors of the present intending added parties have been restrained permanently from discharging the peaceful possession of the plaintiffs of the said suit who are the predecessors in interest of the present petitioners, learned Trial Court is not at all justified in passing the impugned order adding them as defendant Nos. 2 to 10.

On perusal of the annexure to the supplementary affidavit, more specifically; photocopy of the judgment and decree as passed in Title Suit No. 175 of 1977 *vis a vis* the photocopy of the petition under Order 1 Rule 10 of the Code of Civil Procedure as filed before the learned Trial

Court by the intending added parties, it would reveal that in respect of the suit plot No. 1053 learned 1st Court of Munsif at Chandernagore in Title Suit No. 175 of 1977 while passing the decree in favour of the plaintiffs of the said suit confirmed the title of the plaintiff Nos. 2 and 3 of the said suit in respect of the suit plot where the defendants of the said suit were also permanently restrained from disturbing the possession of the plaintiffs in the suit plot. On comparative study of the photocopy of the judgment and decree as passed in Title Suit No. 175 of 1977 and the photocopy of the petition under Order 1 Rule 10 of the Code of Civil Procedure as filed in Title Suit No. 810 of 2014 before the learned Trial Court, it reveals that the plaintiffs of Title Suit No. 810 of 2014 are the successors in interest of the plaintiffs of Title Suit No. 175 of 1977. Similarly, the intending added parties of Title Suit No. 810 of 2014 are also successors of the defendants of Title Suit No. 175 of 1977. Since in their petition under Order 1 rule 10 of the Code of Civil Procedure the intending added parties claimed their right, title and interest over the self-same suit property by virtue of their rights as inherited from their predecessors who are the defendants of Title Suit No. 175 of 1977, the intending added parties cannot have any better title than that of their predecessors, who have lost in Title Suit No. 175 of 1977.

In view of the discussion made herein above, this Court considers that learned Trial Court is not justified in

passing the order of addition of the intending added parties as defendant No. 2 to 10 by the impugned order.

As a result, the instant revisional application being CO 410 of 2019 is hereby allowed.

The impugned Order No. 275 dated December 19, 2018 as passed by learned Civil Judge (Junior Division), Additional Court, Cahndernagore, Hooghly in Title Suit No. 810 of 2014 is hereby set aside.

It is reported that in Title Suit No. 810 of 2014 the Commissioner has not yet submitted to his final report.

In view of such, this Court in exercise of plenary power directs the Commissioner as appointed in Title Suit No. 810 of 2014 to complete the work of commission, if not done in the meantime, within a period of four weeks from the date of communication of this order and to submit his commission's report within a period of eight weeks also from the date of communication of this order. The time limit as fixed by this Court is mandatory. Liberty is given to the plaintiffs of Title Suit No. 810 of 2014 to communicate of this order to the Commissioner as appointed in Title Suit No. 810 of 2014.

Parties to act on the server copies of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)