

Item No. 8
09.06.2023
Court. No. 19
GB

C.O. 487 of 2023

Smt. Nandini N. Suchde
Vs.
Smt. Manju Samanta

Mr. Abhishek Halder,
Mr. Swadesh Misra,
Ms. Madhurima Basu

...for the Petitioner.

Mr. Apurba Ghosh

...for the Opposite Party.

The revisional application has been filed against an order dated January 18, 2023 passed by the learned Civil Judge (Junior Division) at Bidhannagar in Title Suit No.60 of 2019 (CIS No.72 of 2019). The prayer of the defendant, for addition of Manju Ghosh as a party defendant in the suit, was allowed.

By the order impugned, the learned court directed that the cause title of the plaint be amended by incorporating Manju Ghosh also as a defendant.

Mr. Halder, learned advocate appearing on behalf of the petitioner submits that the suit for declaration and permanent injunction had been filed against Manju Samanta for the following reliefs:-

- a) a decree for declaration that the plaintiff was the absolute owner in respect of the flat;
- b) a decree for further declaration that the defendant had got no authority to sell the flat to any third party;
- c) a decree for permanent injunction restraining the defendant and/or her men or agents from encumbering/selling/transferring and/or creating any third party interest in the flat and/or from changing the nature and character of the same;
- d) A decree as to costs;

e) Any other relief or reliefs to which the Plaintiff is entitled as per law or equity.

The whole contention of the plaintiff was that the defendant was the caregiver of the deceased brother. After the death of the brother who was a bachelor and had died intestate, the caregiver unauthorizedly remained in the suit property for some time. With the intervention of the people in the society, the possession was recovered from the defendant. That the defendant was colluding with one Mr. Agarwal and trying to sell the property. Hence the suit was filed. Only in order to grab the property, she was posing herself as the wife of the deceased brother and had filed the application for being added as Manju Ghosh on the plea that late Jayanta Ghosh had married her.

The facts are that the defendant entered appearance in the suit on May 2, 2022. Thereafter, on November 14, 2022 the defendant/opposite party filed an application for addition of party for being added as a defendant claiming to be the wife of deceased Jayanta Ghosh and prayed that she should be described as Manju Ghosh in the suit.

The learned court below allowed the said application and directed the plaintiff to amend the cause title of the plaint and serve a copy upon the added defendant.

This Court is of the view that the order dated January 18, 2023 was passed mechanically without considering the the plaint case. The claim of the plaintiff is that she is the sole owner of the property as her only brother died as a bachelor and intestate. That the defendant was a caregiver and did not

have any claim to the suit property. Marriage between Manju Samanta wife of late Subrata Samanta with Jayanta Ghosh has to be proved as per the law of evidence. Allowing the application amounts to pre-judging the issue of marriage. The decision will be taken by the court as one of the issues as to whether she was the legally married wife of late Jayanta Ghosh or the widow of late Subrata Samanta and a mere caregiver. The burden is on the opposite party to prove herself to be Manju Ghosh wife of late Jayanta Ghosh by leading evidence. Such issue cannot be pre-decided by adding the same person as a defendant in the suit at the instance of the opposite party as Manju Ghosh. The identity of the opposite party shall be decided in the suit as a separate issue.

Hence the order impugned is set aside and cancelled.

It is submitted that the written statement has not yet been filed in the suit. The written statement shall be filed within a week from the next date fixed and the suit shall proceed expeditiously, without granting unnecessary adjournments to either of the parties. This Court is of the view that inordinate delay has already been caused on the issue of identity of the defendant.

Cost of Rs.5,000/- shall be paid by the opposite party. Such cost shall be paid to the learned advocate on record for the plaintiff in the learned court below. The learned advocate for the plaintiff shall grant a receipt. The learned court below, upon being satisfied that the amount has been paid,

shall accept the written statement. If the opposite party succeeds in proving to be the wife of late Jayanta Ghosh, and the suit fails, her name as Manju Ghosh shall at that stage, be incorporated in the decree.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)