

3.2.2023
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Ct. no. 652
sb

C.O. 732 of 2020

**Sri Gour Biswas & Anr.
Vs.
Purna Chandra Biswas & Ors.**

Mr. Surja Prasad Chattopadhyay
Mr. Arjun Samanta ...for the petitioners

Affidavit of service filed by the petitioners is taken on record. In spite of service, opposite parties are not represented.

This application under Article 227 of the Constitution of India has been preferred against an order no. 69 dated 18.11.2019, passed by the learned Civil Judge, Junior Division, 1st Court, Ranaghat, Nadia in Title Suit no. 132 of 2009.

The petitioners contended that the petitioner instituted aforesaid suit praying for decree of declaration of title and eviction of licensee against the opposite party no. 1/defendant herein. The petitioners state that during pendency of the said suit, the petitioners filed an application under Order I Rule 10(2) read with Section 151 of the Code of Civil Procedure praying for addition of Sri Ananda Biswas, the father of the plaintiffs herein as proforma defendant. Learned court below by the impugned order, was pleased to reject the plaintiff's aforesaid application under Order I Rule 10(2).

Learned counsel for the petitioners submits that the court below has erred in rejecting the plaintiff's' aforesaid application and the court below ought to have considered that the father of the plaintiffs, Sri Ananda Biswas is a necessary party in the suit as he has granted licence on behalf of the plaintiffs, as at the relevant time, plaintiffs were minor and he himself has also revoked the licence on behalf of the plaintiffs. He further submits that learned court below failed to appreciate that at any stage of the proceeding, court can add a person who is necessary and proper party for effective and conclusive adjudication of the suit. Learned court below has passed the said order on the basis of surmise and conjectures. Accordingly, the said order is liable to set aside.

Perused the order impugned and considered the submissions made by both the parties. On perusal of the impugned order, it appears that the sole ground for rejection of the said application is that cross examination of PW 1 has already been closed and PW 1 i.e. plaintiff no. 1 deposed in the instant suit for himself and on behalf of plaintiff no. 2 and accordingly, addition of the father of the plaintiffs as proforma defendant no. 5 is not required.

It is settled principle of law that the plaintiff is the master of the suit and it is the plaintiff who is to decide against whom, he wants to fight and against whom, he does not want to fight. Accordingly, the plaintiffs being

the dominus lites of the suit have contended that their father, Sri Ananda Biswas has granted licence to the defendant and he has also revoked the licence on behalf of the plaintiffs as the plaintiffs at the relevant point of time, were minor. Accordingly, said Ananda Biswas has exclusive knowledge about the issue involved in the suit and the suit is required to be heard and disposed of in his presence. When the word "Party" is used with reference to a proceeding in a court it means of person who has a part to play in the proceeding. The principle for impleading a third party to a proceeding is avoidance of multiplicity of proceedings and hence court has jurisdiction to add a party, who is necessary or properly party. A necessary party is one without whom no order can be made effectively and proper party is one whose presence is necessary for a complete and final decision on the questions invoked in the proceeding. One of the objects of Order I, rule 10 is to enable the court to try and determine for all the materials questions between the parties and the third parties and not merely the questions between the parties in the suit. Here the question involved is whether the person who is sought to be added as a party in the suit by the plaintiffs, had actually granted any licence to the defendant or not in respect of suit property on behalf of the plaintiffs and whether such licence was subsequently revoked by that person on behalf of minors/plaintiffs or not at the

relevant point of time and as such said father of the plaintiffs is a proper party within the meaning of Order I, Rule 10(2) inasmuch as his presence is necessary in order to enable the court to effectual and completely adjudicate upon and settle all the questions involved in the proceeding.

Accordingly, I find substance in the prayer and the ground that the evidence of PW 1 has been closed, cannot stand in the way of allowing the said petition under Order I Rule 10(2) of the Code.

In view of above, the impugned order no. 69 dated 18.11.2019 is hereby set aside. Sri Ananda Biswas is impleaded as proforma defendant no. 5 in the cause title of the plaint. Let the plaint be amended accordingly. The court below will send notice to such added defendant no. 5 in order to give him an opportunity to contest and also to give him an opportunity to both the parties for examination and cross examination if any, on the point of addition of proforma defendant no. 5 in this suit, to the witness, whose examination has already been done.

Accordingly, C.O. 732 of 2020 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)