

S/L 28 & 29
01.05.2023
Court. No. 12
Swayan

**CO 808 of 2022
With
CO 1595 of 2022**

**Sk. Shajamal & Ors.
Vs.
Ashim Mondal & Ors.**

*Mr. Sarajit Sen
Mr. Tapas Singha Roy*

...for the petitioners.

*Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee*

...for the opposite parties.

1. Both parties are represented by their respective learned Advocates.
2. Heard Mr. Sarajit Sen, learned Advocate for the petitioners at length. Also heard Mr. Dyutiman Banerjee, learned Advocate led by Mr. Partha Pratim Roy, learned Advocate for the opposite parties.
3. The affidavit-in-opposition and the affidavit-in-reply as filed today be taken on record.
4. The present revisional application is now taken up for passing appropriate order.
5. In this revisional application as filed under Article 227 of the Constitution of India the Order No. 141 dated January 5, 2022 as passed by learned Civil Judge (Junior Division), 2nd Court, Baruipur, District – South 24 Parganas in Title Suit No. 47 of 2011 has been assailed.
6. By the impugned order learned Trial Court allowed the opposite party Nos. 10 and 11's application

under Order 1 Rule 10 of the Code of Civil Procedure and, thus, directed that the present opposite party Nos. 10 and 11 be added as defendant Nos. 10 and 11 in Title Suit No. 47 of 2011 as pending before the learned Trial Court.

7. In support of the instant revisional application learned Advocate for the plaintiffs/revisionists at the very outset draws attention of this Court to the photocopy of the petition under Order 1 Rule 10 of the Code of Civil Procedure as has been annexed with the affidavit-in-reply as filed by the present revisionists. It is contended by Mr. Sen, learned Advocate for the present revisionists/plaintiffs that from the said application under Order 1 Rule 10(2) of the Code of Civil Procedure as filed by the present opposite party Nos. 10 and 11, it would reveal that the present opposite party Nos. 10 and 11 claimed their right, title and interest over the suit property by virtue of a probated will of one Debi Prosad Gupta, since deceased where the mother of the present opposite party Nos. 10 and 11 namely; Amita Gupta, since deceased was the sole executrix and the beneficiary of the said will of the testator Debi Prosad Gupta.
8. Drawing attention to the provision of Section 273 of the Indian Succession Act, 1925 and the reported decision ***Smt. Kanta vs. State and Another*** reported in ***AIR 1985 Delhi 453*** it has been contended by Mr. Sen, that learned Trial

Court while passing the impugned order did not visualise the effect of Section 273 proviso Clause (b) of the said Act of 1925.

9. It is further contended by Mr. Sen since the aforesaid alleged probate has been granted by a district Court of the State of Assam the same has got no binding effect in respect of the suit property since the valuation of the suit property was at the time of execution of the will as well as grant of probate was more than Rs. 10,000/-
10. Mr. Sen, thus, submits before this Court that it is a fit case for allowing the instant revisional application by setting aside the impugned order.
11. *Per contra*, Mr. Banerjee, learned Advocate for the opposite party Nos. 10 and 11 at the very outset draws attention of this Court to the impugned order. It is argued by Mr. Banerjee, that while passing the impugned order learned Trial Court took care of all possible consequences that may arise during the pendency of Title Suit No. 47 of 2011 after allowing the present opposite party Nos. 10 and 11's application for addition of parties. Mr. Banerjee, thus, submits before this Court that it is a fit case for dismissing the instant revisional application.
12. This Court has meticulously gone through the entire materials as placed before this Court including the certified copy of the impugned order. This Court has also perused the provision of

Section 273 of the said Act of 1925 and the reported decision of **Smt. Kanta** (Supra). This Court has given its due consideration over the submissions of the learned Advocates for the contending parties.

13. On perusal of the entire materials as placed before this Court and after giving due consideration of the submission of the learned Advocate for both the parties, it appears to this Court that before the learned Trial Court the opposite party Nos. 10 and 11 herein has claimed their independent right, title and interest by virtue of a probated will as executed by one Debi Prosad Gupta. As rightly pointed out by the learned Trial Court as to whether the said probated will at all be considered for determining the right, title and interest of the opposite party Nos. 10 and 11 herein in respect of the suit property, the matter can be decided by trial on evidence before the learned Trial Court. It appears to this Court that the learned Trial Court has also correctly come to a finding that at the stage of entertaining the petition under Order 1 Rule 10 of the Code of Civil Procedure it is only necessary to be looked into as to whether the presence of the opposite party Nos. 10 and 11 herein are at all necessary for effective adjudication of the said suit or not.
14. In considered view of this Court, the view taken by the learned Trial Court while passing the

impugned order is absolutely justified since by making the present opposite party Nos. 10 and 11 as party defendant Nos. 10 and 11, learned Trial Court did not decide their right, title and interest as have been claimed by them in respect of the suit property.

15. In considered view of this Court, the reasoning as given by the learned Trial Court while passing the impugned order is perfectly justified and this Court is in agreement with the learned Trial Court that presence of the opposite party Nos. 10 and 11 are very much necessary for effective adjudication of Title Suit No. 47 of 2011.
16. In view of the discussion made hereinabove, this Court finds no merit in the instant revisional application and accordingly instant revisional application is hereby dismissed on contest.
17. Consequently, the impugned Order No. 141 dated January 5, 2022 as passed by learned Civil Judge (Junior Division), 2nd Court, Baruipur, District – South 24 Parganas is hereby affirmed.
18. It is, however, made clear that the observation as made hereinabove is purely limited for the disposal of the instant revisional application and learned Trial Court is hereby directed not to persuade himself with any of the observations as made herein above at the time of disposal of Title Suit No. 47 of 2011 on its merit.

19. With the aforementioned observation, the instant revisional application being CO 808 of 2012 is, thus, disposed of.
20. Parties to act on the server copies of this order.
21. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.
22. In view of disposal of CO 808 of 2022, the file of CO 1595 of 2022 be de-tagged from the instant case record.

(Partha Sarathi Sen, J.)