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C.O. 1457 of 2019

Robilal Bose
-vs-
Subhas Chandra Dey & anr.

Mr. Sounak Bhattacharya
Mr. Chandranath Sarkar
Mr. Sounak Mandal
Mr. Anirban Saha Roy
...for the petitioner
Mr. Tanmoy Basu
...for the OP

Affidavit of service filed on behalf of the petitioner is taken on record.

Being aggrieved and dissatisfied with the order no. 82 dated 07.03.2019 passed by the learned Civil Judge (Jr. Division), 2nd Court at Baruipur, District- 24 Parganas South in Title Suit No. 157 of 2012, present revisional application has been preferred.

The petitioner submits that the opposite party as plaintiffs filed a suit for declaration of title and permanent injunction and recovery of 'khas' possession against the petitioner herein. After entering appearance in the said suit, the petitioner herein as defendant filed written statement. Thereafter, plaintiff/opposite party herein filed an application under Order 1 Rule 10 of the Code, for addition of parties as defendants. Opposite party herein also filed an application under Order VI Rule 17 of the Code of Civil

Procedure for amendment of plaint, which is still pending. In the proposed petition for amendment, plaintiff has sought to incorporate that during pendency of the suit one Sri Ranjit Kumar Poddar conspired with the defendant fraudulently sold and transferred the schedule property to Sri Pintu Naskar by virtue of a registered deed of sale for the year 2014 and in the said petition under Order 1 Rule 10, the plaintiff sought to add said transferee namely Sri Pintu Naskar as a necessary party in the suit by incorporating his name in the defendant category.

Petitioner contended that the Court below in exercise of his jurisdiction, acted illegally and with material irregularity by allowing the application of addition of party without appreciating the fact that pleadings regarding this addition of party has still not been allowed by the Court and before incorporating the said fact in the pleading, the Court below illegally allowed the addition of party. He further submits that the cause of action for filing the application for addition of party has not yet been permitted to be inserted by way of proposed amendment, the learned Court below acted illegally and with material irregularity in allowing the plaintiff's prayer for addition of party filed under Order 1 Rule 10 of the Code.

Learned counsel, Mr. Tanmoy Basu, on behalf of the opposite party submits that the application has been filed only to drag the proceeding and the Court below may be directed to make early disposal of the amendment

application filed by the plaintiff/opposite party herein.

Having considered the facts and circumstances of the case, it appears that the trial Court before considering the plaintiff's prayer for amendment to the effect that defendant during pendency of suit has transferred property to one Pintu Naskar, has inadvertently allowed plaintiff's other petition under Order I, Rule 10, where said Pintu Naskar has been sought to be added as a party. The plaintiff's prayer for amendment of plaint incorporating the cause of action against aforesaid Pintu Naskar should have been disposed of first.

In view of above, the impugned order dated 07.03.2019 passed by the learned Civil Judge (Jr. Division), 2nd Court at Baruipur is hereby set aside.

Learned Civil Judge (Jr. Division), 2nd Court at Baruipur is hereby directed to dispose the plaintiff's application under Order VI Rule 17 first, and then to hear afresh and dispose of the plaintiff's said application under Order 1 Rule 10 of the Code of Civil Procedure.

Trial Court is further directed to dispose of aforesaid two applications within a period of 12 weeks from the date of communication of this order and to expedite the final hearing of the suit.

I have made clear that I have not gone into the merit of either of the applications or the suit itself and learned Court will dispose of both the applications as well as the suit without being influenced by any observations made herein.

C. O. 1457 of 2019 is accordingly disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Ajoy Kumar Mukherjee, J.)