

June 6, 2023
Sl. No.A 42
Court No.19
s.biswas

CO 1347 of 2023

Birendra Nath Bar
vs.
Subhabrata S Mukherjee and others

Mr. Animesh Paul
Ms. Haardikaa Rajdev

... for the petitioner

Mr. Sarajit Sen
Mr. Tapas Singha Roy

... for the opposite party no.1

The petitioner is a defendant in a suit for declaration and injunction. The petitioner is aggrieved by portion(c) of the order dated March 4, 2023 passed in Title Suit No.1416 of 2022.

The petitioner is aggrieved because the learned court below allowed the application filed by the opposite party no.1 under Order 1 Rule 10(2) of the C.P.C.

According to the petitioner, Subhabrata S Mukherjee suppressed the fact that he had already sold the property to some other persons.

Subhabrata S Mukherjee did not have a share in the property which he claimed through the deceased Satya Bhusan Mukherjee. The learned court below allowed the application for addition of the opposite party No.1 as a proforma defendant for proper and effective adjudication of the suit.

The petitioner submits that such portion of the order has caused irreparable loss and injury to the

petitioner and has been prejudicial to the defendant/petitioner. The petitioner is the defendant no.1 in the suit and the allegation in the plaint is that the petitioner had encroached a part of the Schedule A property. The plaintiffs had filed the Title Suit claiming to be owners by inheritance through deceased Satya Bhusan Mukherjee. The opposite party no.1 filed an application for addition on the ground that the said opposite party was also one of the legal heirs of Satya Bhusan Mukherjee. The said application was allowed. The petitioner submits that when the opposite party no.1 sold out the property to third parties, the question of addition of the opposite party no.1, did not arise.

Even if the reasoning of the learned court below is not happy, this Court is of the view that the final conclusion arrived at by the learned court below is correct. Even if the share of the opposite party no.1 in the Schedule A property had been sold out to third parties, the fact remains that the opposite party no.1 claimed through deceased Satya Bhusan Mukherjee and the plaintiffs are his brothers and sisters. The plaintiffs suppressed the fact that Subhabrata S Mukherjee was also one of the heirs of the deceased and prayed for a declaration that the plaintiff were the owners of schedule A property. The suit was filed before the sale by the opposite party

no.1, when he allegedly had substantial interest. The correctness of such submission will be subject to the final decision in the suit. Even if the contention of Mr. Paul, learned advocate for the petitioner is accepted to the effect that the factum of the sale should have been brought to the notice of the learned trial court, this Court is of the view that at the time of the final hearing of the suit, such fact can be looked into by the learned trial judge. The opposite party no.1 is a proper and necessary party and any order that may be passed in the suit with regard to the declaration of the right, title and interest of the plaintiffs in respect of the Schedule A property, will affect all the heirs of the deceased Satya Bhusan Mukherjee and shall also have an effect on the transfer made by the said added party.

Moreover, the declaration sought for by the plaintiffs that they are the owners of the Schedule A property would amount to negation of the title of the opposite party no.1, which in effect, would ultimately render the sale of the opposite party no.1 to a third party as null and void. Hence, the opposite party no.1 has every right to defend his share in spite of the fact that his share had been sold out subsequently. Moreover, the petitioner does not have any claim over the Schedule A property. The petitioner accepts the fact that the heirs of Satya

Bhusan Mukherjee are the owners of the Schedule A property. The petitioner is only denying the allegation of encroachment over the Schedule A property. Such defence of the petitioner with regard to the alleged encroachment shall not be affected, even if the opposite party no.1 is added in the proceedings. However, the prayer for declaration that the plaintiffs are the sole owners of the Schedule A property, if allowed, would deny the right of the opposite party no.1 in respect of the suit property as an heir which in turn will affect the subsequent sale.

This Court does not find any illegality in the order impugned. The opposite party no.1 is allowed to file written statement within three weeks. This Court is of the view that the learned trial judge must take expeditious steps to dispose of the suit along with any pending application.

The revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)