

S/L 17
04.08.2023
Court. No. 29
Sourav

CO 1595 of 2022

**Urmimala Bhattacharyya & Anr.
Vs.
Sthyai Project LLP & Ors.**

*Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee*

...for the petitioner.

*Mr. Sarojit Sen
Mr. Tapas Singha Roy*

...for the opposite party nos. 2 to 6.

1. Both the petitioners and the opposite party nos. 2 to 6 are represented by their respective learned advocates.
2. The affidavit-of-service as filed today on behalf of the petitioners be taken on record.
3. None appears on behalf of the plaintiff/opposite party no. 1.
4. I have heard learned advocate for the petitioners and learned advocate for the opposite party nos. 2 to 6 at length in support of and against the instant revisional application.
5. In this revisional application, the Order no. 107 dated 30.04.2022 as passed by learned Civil Judge (Junior Division), 2nd Court, Baruipur, South 24 Parganas in Title Suit No. 93 of 2011 has been impugned.
6. By the impugned order, the learned Trial Court in a suit for declaration and injunction, has been pleased to reject third parties' (who are the petitioners herein) application under Order 1 Rule 10 (2) of the Code of Civil Procedure. The said third parties who are the revisionists before this Court felt aggrieved and thus approached this Court in

filing a revisional application under Article 227 of the Constitution of India.

7. Mr. Banerjee, learned advocate for the revisionists at the very outset draws attention of this Court to the petition for addition of party as filed before the learned Trial Court. Attention of this Court is also drawn to the impugned order. It is contended by Mr. Banerjee that though in paragraphs 3 to 6 of the petition under Order 1 Rule 10(2) CPC, the present revisionists have clearly described as to how the suit property as involved in Title Suit No. 93 of 2011 devolved upon them, learned Trial Court has failed to visualize the said averments of the present revisionists and passed the impugned order of rejection on the ground that the present petitioners have withheld the affidavit-of-assets which are part and parcel of the probate granted in favour of the present revisionists.
8. It is contended on behalf of the revisionists that in the event, the present revisionists have not been made parties/defendants in Title Suit No. 93 of 2011, there would be every chance of multiplicity of the suit and proceeding as well as for the present revisionists may suffer irreparable loss and injury in respect of their properties which are the subject matter of Title Suit No. 93 of 2011.
9. Though from the impugned order, it does not transpire that the defendants of Title Suit No. 93 of 2011 on behalf of the contesting defendants of the said suit who are the opposite party nos. 2 to 6 herein objected to the petition

as filed under Order 1 Rule 10 (2) CPC before the Trial Court but Mr. Sen, learned advocate for the opposite party nos. 2 to 6, however, supports the impugned order. It is contended that provision of Section 273 of the Indian Succession Act, more specifically, proviso (2) Section 273 of the said Act clearly postulates that in order to have a binding force of the probate or letter of administration in respect of any property which is situated in another State, there is a limit of value of Rs. 10,000/- in respect of binding force of the probate or letter of administration issued by the District Judge of another State. It is thus contended that unless the affidavit-of-assets as filed in the probate case as granted in favour of the present revisionists has not been filed before the learned Trial Court, learned Trial Court is absolutely justified in rejecting the prayer for addition of parties as filed by the petitioners.

10. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for contending parties, it appears that before the learned Trial Court the present revisionists are successful in making out a *prima facie* case in establishing that they have a *prima facie* interest over the suit property, which is the subject matter of Title Suit No. 93 of 2011. Whether the title of the revisionist has become perfect or not either on account of non-payment of appropriate court fees in a probate proceeding or for any other reason that can be decided by the learned Trial Court only on trial on evidence.

11. Such being the position, this Court is of considered view that when the present revisionists before him have approached with a contention that they have right, title and interest over the suit property, learned Trial Court ought to have allowed such application under Order 1 Rule 10 (2) CPC as filed by the revisionists keeping all points open with regard to the right, title and interest of the present revisionists for determination at the time of hearing.
12. Such being the position, the instant revisional application being **CO 1595 of 2022** is hereby allowed and disposed of.
13. Consequently, the impugned Order no. 107 dated 30.04.2022 as passed by the learned Civil Judge (Junior Division), 2nd Court, Baruipur, South 24 Parganas in Title Suit No. 93 of 2011 is hereby set aside. Consequently, the petition under Order 1 Rule 10(2) of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure as filed by Urmimala Bhattacharyya and Sharmila Gupta Roy is hereby allowed and they be added as defendant nos. 7 and 8 in Title Suit No. 93 of 2011 as pending before the learned Trial Court.
14. The plaintiff of Title Suit No. 93 of 2011 is directed to serve copy of the plaint of the said suit upon the learned advocate for the added defendants preferably within a fortnight from the date of communication of this order and the added respondents who are the revisionists before this Court are to file their written statement within

a month from the date of receipt of the copy of the plaint of Title Suit No. 93 of 2011.

15. Before parting with the instant case record, it is made clear that the Court has not entered into the question of legality and validity of probate as claimed to have been granted in favour of the present revisionists and, therefore, the said point is kept open for the learned Trial Court while disposing Title Suit No. 93 of 2011.
16. Parties are directed to act upon the server copy of this order duly downloaded from the official website of this Court.
17. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)