

19.06.2023
Sl. No.19(DL)
srm

C.O. No. 1658 of 2023

Achinta Kumar Chakraborty @ Achintya Chakraborty

Versus

Alok Chakraborty & Ors.

Mr. Rajdeep Bhattacharya,
Mr. Sauradeep Dutta

...for the Petitioner.

Mr. Manoj Kumar Bhattacharyya

...for the Opposite Party No.1.

Affidavit-of-service is taken on record.

The opposite party Nos.6 and 7 have refused service.

Such refusal of service is taken to be good service. The learned Advocate for the opposite party No.1 appears.

The revisional application is taken up in the absence of the opposite party Nos.6 and 7.

The plaintiff in the suit for partition has challenged the order dated April 10, 2023 passed by the learned Civil Judge (Senior Division), Chanddannagar, Hooghly, in Title Suit No. 114 of 2021. By the order impugned, the learned court below held that the petitioner under Order I Rule 10(2) of the Code of Civil Procedure for deletion of the name of the opposite party No.7 was liable to be rejected. The reason behind such decision was that Section 15(1) of the Hindu Succession Act, 1956 read

with Section 16 thereof mandated that the husband of a deceased Hindu would inherit her property along with the children, simultaneously. Hence, the defendant No.7 had an interest in the property.

Mr. Bhattacharya, learned Advocate for the petitioner submits that the husband of the deceased daughter of the original owner late Phanibhusan Chakraborty would not be entitled to any share in the property as a co-sharer as his right was barred by the provisions of Section 15(2) of the Hindu Succession Act, 1956.

Paragraphs 2 and 3 of the plaint indicate that the suit property comprised of 22 plots. The suit property originally belonged to late Phanibhusan Chakraborty, who died intestate in 1999 leaving behind him five sons, two daughters and his widow. The widow, Avaranani Chakraborty died in 2019 and the plaintiff, the defendant Nos.1 to 5 and late Sipra Roy inherited $1/7^{\text{th}}$ share each. Thereafter, Sipra Roy, one of the daughters, died leaving behind Sangita Roy (daughter) and Uttam Roy (husband).

Subsequently, the plaintiff wanted to expunge the defendant No.7 from array of defendants on the ground that Section 15(2) of the Hindu Succession Act, 1956 stipulated that in the absence of children, inherited property of a female

Hindu would died intestate would revert back to the heirs of either the mother or the father. In the presence of children, inherited property of a female Hindu who died intestate would devolve upon the children and not the husband.

In support of such contention, reliance had been placed on a decision of the Hon'ble Apex Court in the matter of Radhika vs. Aghnu Ram Mahto reported in 1994(5) SCC 761. According to the petitioner, the respondent No.7 was inadvertently added as a defendant and the share of late Sipra Roy would devolve only upon the daughter. Admittedly, none of the defendants opposed such prayer of the plaintiff.

The learned court below rejected the said application and refused to delete the name of the husband, upon holding that he had a substantial interest.

A plain reading of the decision of the Hon'ble Apex Court, especially paragraph 3 thereof, indicates that the children and the children of the predeceased son or daughter of a Hindu female alone, would be entitled to the property inherited by such female who died intestate, and the husband stood excluded from the succession of the property inherited by any Hindu female.

However, this aspect is not germane unless there is a dispute amongst the defendant Nos.6 and 7 with regard to the

1/7th share of Sipra Roy. Whether the husband would inherit the property of late Sipra Roy by devolution as per Sections 15(1) or not, would not be relevant for the plaint case. Devolution of interest of late Phanibhusan Chakraborty would be guided by the provisions of Hindu Succession Act. The plaint case is that the plaintiff, defendants and Sipra Roy (since deceased) had 1/7th share each.

The learned Advocate for the opposite party No.1 also submits that 1/7th share of each of the children of late Phanibhusan Chakraborty is not in dispute. However, the shares will be decided in the preliminary decree. If Sipra's share of 1/7th was admitted and upheld, in that event, no further dispute would be alive as apprehended by Mr. Bhattacharya, learned Advocate for the petitioner. How Sipra's share will be divided amongst the defendant Nos.6 and 7 would be an issue amongst them. It is not a case that the shares of the surviving heirs of the deceased Phanibhusan Chakraborty would be diminished if the defendant No.7 continues as a party in the suit.

The order impugned is modified to the above extent that the observations with regard to the application of Sections 15(1) and 15(2) of the Hindu Succession Act, 1956 in respect of

the interest of the defendant No.7 in the suit property, shall be treated as deleted from the order impugned.

The suit shall proceed expeditiously, on the evidence and the records and the preliminary decree should be passed within six months from the date of communication of this order.

The revisional application is disposed of.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)