

S/L 40
20.02.2023
Court. No. 12
Swayan

CO 1785 of 2022
With
IA No: CAN 1 of 2022

Shri Tuhindra Narayan Roy
Vs.
Shri Atindra Narayan Roy & Anr.

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee
Mr. Salil Kumar Maiti
Ms. Pinki Saha

...for the petitioner.

Mr. Tanmoy Mukherjee
Mr. Biswajit Chowdhury
Mr. K. R. Ahmed

...for the opposite parties.

Both the parties are represented by their respective learned Advocates.

I have heard the learned Advocate for the contending parties at length.

In this revisional application as filed under Article 227 of the Constitution of India the order dated 20.05.2022 as passed by the learned Civil Judge (Senior Division), 1st Court, Howrah in Title Suit No. 49 of 2018 has been assailed.

By the impugned order learned Trial Court in a suit for partition as filed by the revisionist/plaintiff has been pleased to allow a petition under Order 6 Rule 17 of the Code of Civil Procedure as filed by the defendants for amendment of their written statement. The plaintiff felt aggrieved and, thus, preferred the instant revisional application.

In support of the instant revisional application Mr. Partha Pratim Roy, learned Advocate for the

revisionist/plaintiff at the very outset draws attention of this Court to the plaint as filed before the learned Trial Court in the said suit, the written statement as filed by the opposite parties/defendants, copy of the petition under Order 11 Rule 12 of the Code of Civil Procedure and copy of the Order 11 Rule 1 of the Code of Civil Procedure as filed by the plaintiff in the said suit. Attention of this Court is also drawn to the reply as given by the defendants/opposite parties disclosing the names and other particulars of the persons in respect of whom interrogatories have been sought for and allowed by the learned Trial Court.

It is argued by Mr. Roy, that after supplying the details of the persons as mentioned above by an order dated 10.01.2020 learned Trial Court directed the plaintiff of the said suit takes steps which was challenged before this Court in CO 315 of 2020 wherein under the said order dated 10.01.2020 was set aside by this Hon'ble Court. It is argued by Mr. Roy, that after loosing such battle, the defendants/opposite parties herein have again come forward with an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of their written statement and in the garb of such proposed amendment they have disclosed the names and other particulars of the siblings of the parties to the instant lis and also disclosed some properties situated in the district of Purba Medinipur claiming *inter alia* that those properties are joint properties.

It is argued by Mr. Roy that while passing the impugned order and thereby allowing the petition for amendment, learned Trial Court has failed to visualise that the subject matter of Title Suit No. 49 of 2018 relates to properties situated in the district of Howrah of which the present plaintiff and the defendants are the co-sharers and that the cause of action for the said suit clearly centres around the enjoyment and user of the said property. It is, thus, argued by Mr. Roy that learned Trial Court while passing the impugned order has failed to appreciate the provisions of Order 6 Rule 17 of the Code of Civil Procedure in its proper perspective and, thus, misguided himself in passing a wrong order which is not justifiable in the eye of law.

Mr. Mukherjee, learned Advocate for the opposite parties/defendants, however, opposes such contention. It is argued by him that it is the principle of law that in a suit for partition all the co-sharers are to be brought on record as well as all the joint properties are also to be brought into the common hotchpotch. It is thus argued by Mr. Mukherjee that learned Trial Court committed no error of fact or of law in passing the impugned order. It is also submitted that before the learned Trial Court trial has not yet been commenced.

This Court has meticulously perused the entire materials as placed before this Court. This Court has given its due consideration over the submissions of the learned Advocates for both the parties.

Admittedly in Title Suit No. 49 of 2018 the suit property which according to the plaintiff belongs to the parties to the instant lis is situated at Howrah but when the defendants in their written statement have disclosed that there lies some joint properties in the district of Purba Medinipur of which not only the plaintiff and the defendants of the said suit are the co-sharers but also their other siblings are equally co-sharers of those properties.

Such being the position, this Court finds no illegality and irregularity on the part of the learned Trial Court in allowing that portion of the pleading of the written statement as and by way of amendment as sought for.

In view of such discussion made herein above, the instant revisional application fails. The impugned order dated 20.05.2022 as passed by learned Civil Judge (Senior Division), 1st Court, Howrah in Title Suit No. 49 of 2018 is hereby affirmed.

Accordingly, the instant revisional application being CO 1785 of 2022 along with interim application being CAN 1 of 2022 are stands hereby dismissed.

Parties to act on the server copies of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)