

7.6.2023
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Ct. no. 652
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C.O. 2449 of 2019

**Swapam Das @ Sri Swapam Kumar Das & ors.
Vs.
Mahisadal Sun Shine Club & Ors.**

Mr. Tushar Sinha Mahapatra
Mr. Subrata Santra ...for the Petitioners

Mr. Asish Chandra Bagchi
Ms. Malyasree Maity ...for the O.P no. 1

This is an application under Article 227 of the Constitution of India against order no. 116 dated 16.4.2019 passed by learned Civil Judge (Junior Division), Haldia, Purba Medinipur in Title Suit no. 345 of 1994. By the impugned order, learned court below was pleased to allow the prayer for impleading the opposite party no. 1 as a party in the said suit.

It has been contended by the petitioner that Radharani Das, mother of the present petitioners as plaintiff filed aforesaid suit for declaration and permanent injunction in the court of learned Civil Judge (Junior Division), Haldia, Purba Medinipur against the defendant/proforma opposite party nos. 2 and 3 and subsequently the proforma/opposite party nos. 4 to 7 have been added as defendant nos. 3,4,5 and 6.

In the plaint, it has been stated that Sarojini Beshya and Rajani Beshya were the original owner of the suit property and their names were recorded in the C.S. record of rights. After death of her sister, Sarijini Beshya became the sole owner and said Sarijini Beshya sold the suit property in favour of Satish Chandra Sen by way of deed dated 11.4.1929. Thereafter, Satish Chandra Sen sold the suit property in favour of Sri Sri Sridhar Jew Thakur and Sri Sri Kali Mata Jew Thakurani represented by Sebait Janendra Nath Dey by registered deed dated 30th July, 1931. After the death of said Sebait Janendra Nath Dey, his son and daughter were appointed as sebait for the said deities. For the purpose of maintenance of deities, they sold suit property in favour of Radha Rani Das, original plaintiff of the suit by registered deed on 19.7.1971. On 20th July, 1994, the plaintiff came to know that the R.S. record and L.R. record of rights have been published in the name of Sarojini Beshya and Rajani Beshya which entry is wrong and has no basis. The original plaintiff made an application for correction of the L.R. Record of Rights before the defendant nos. 1 and 2 but they refused to do the same and accordingly, the suit has been filed. In the said suit, the original defendants did not chose to appear and contest and as such suit was heard ex parte. But the court below dismissed the suit ex parte vide its order dated 19.7.2012. The plaintiff preferred an appeal against the said ex parte judgment

and decree dated 19.7.2012 and the said appeal was heard and disposed of on 21st March, 2007 by which the appellate court sent back the case in open remand.

Thereafter, in the court below, the defendant did not take any step. The opposite party no. 1 (Club) herein filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure for adding the club in the defendant category. The learned court below after hearing both the parties, passed the impugned order by which the court below was pleased to allow the said application of the Club under Order 1 rule 10(2) of the Code. It is further contended that the said opposite party no. 1/Club who has been added as a defendant by the impugned order has filed a separate suit being Title Suit no. 224 of 2017 claiming their adverse possessory right over the suit property, which is also pending before the same court.

Learned counsel for the petitioner submits that the court below was erred in allowing the said application under Order 1 Rule 10(2) as plaintiff/petitioners have not claimed any relief against the said added defendant/club/opposite party no. 1 herein and no cause of action of the present suit has arisen against the said club and in fact, at the time of filing of the suit, the club was not in existence. The court below had acted illegally and with material irregularity in exercise of its jurisdiction in passing the order impugned without considering the cause of action of the suit which arose on

20th July, 1994 when the opposite party no. 1 had got no existence. Accordingly, the court below ought not to have passed the impugned order and ought not to have added defendant/opposite party no. 1 as necessary party in this suit. It is further submitted that the opposite party no. 1 has no document to show their possession in the property and accordingly prayed for setting aside the order impugned.

Learned counsel for the opposite party submits that the opposite party no. 1 is in actual possession of the property and they have acquired title in the property by way of adverse possession. In order to establish right of acquisition of title in the property by way of adverse possession, they have filed aforesaid Title suit no. 224 of 2017 against the substituted plaintiff no. ka, kha of earlier suit and also against Shibani Bera, Shanti Singh, Madhusudan Midya and Sakti Kumar Midya. The property involved in both the suits are same which is plot no. 196 measuring 8 decimals of land in mouja Garhkamal under the police Station Mahisadal, District. Purba Medinipur. He further submitted on behalf of opposite party no. 1 that suit property still recorded in the name of original owner Rajoni and Sorojini as Rayet under which the name of plaintiff's predecessor Radha Rani Das been recorded as "Permissive occupier", though they are not in actual possession and the opposite party no. 1 is presently in actual possession of the suit property

and as such the right title interest of plaintiff in Title suit no. 345 of 1994 in respect of the suit property is in direct conflict with the right title interest of plaintiff in Title suit no. 224 of 2017 and both the suits are pending before same Judge. In this context learned counsel for the opposite party further submits that for effective and conclusive adjudication of the dispute, both the suits are required to be heard simultaneously. Such analogous hearing is also required in order to avoid conflict of judicial decisions

The heading of Rule 10(2), “court may strike out and add parties” with reference to a proceeding in a court, primarily refers to litigant. In other words “ Party” denotes a person who has a part to play in the proceeding. Accordingly, where it is necessary for a complete adjudication of the question involved in connection with the property in question and also to avoid multiplicity of proceeding/judicial opinion and most importantly to decide all material, questions common to the parties i.e. right title interest and possession over the suit property, all the parties including opposite party no. 1 herein who claims interest over the property should be tried once for all and as such it is imperative that both the suits are required to be tried simultaneously by a single Judge, so that all the issues involved in connection with the suit property between the parties shall be adjudicated once for all.

In view of above, I do not find any reason to interfere with the order impugned and accordingly, C.O. 2449 of 2019 is dismissed.

Learned Civil Judge (Junior Division), Haldia, Purba Medinipur is hereby directed to hear simultaneously Title suit no. 345 of 1994 along with title Suit no. 224 of 2017 pending before him and to pass a common judgment adjudicating all the issues involved in connection with suit property as raised by the parties. The court below is further directed to make expeditious hearing of both the suits as the earlier suit is pending since 1994. The court below will make every endeavour to conclude the trial of both the suits preferably within a period of eight months from the date of communication of the order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)