

30.03.2023
Item No.137
Ct. No. 654
Aloke

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 2202 of 2022

Sri Manas Kumar Das

versus

Sri Somenath Kusari & Ors.

Mr. Kumar Jyoti Tiwari
Ms. Rajlakshmi Ghatak
Mr. Aritra Kr. Thakur
... For the petitioner

Mr. Kaustav Chandra Das
Mr. Jameena Saha
... For the opposite party no. 4

This is an application under Article 227 of the Constitution of India filed by defendant no. 1- petitioner challenging the order dated 27th June, 2022 passed by the learned Civil Judge (Senior Division), 6th Court at Alipore, South 24-Parganas in Title Suit No. 544 of 2019 allowing the application of the applicant to be added as plaintiffs under Order 1 Rule 10(2) of the Civil Procedure Code.

The brief fact of the case is that the plaintiffs-opposite party nos. 1 to 3 filed a suit for declaration and cancellation of deed of gift being no. 160200203 for the year 2018. In the said suit the defendant no. 1 entered appearance and filed his written statement. Subsequent thereto, on 26th April, 2022, the applicant-opposite party no.4, Saikat

Bhattacharya filed an application for adding him as plaintiffs in the array of the parties. Upon hearing the learned Trial Court by the impugned order allowed the applicant to be added as plaintiff no. 4.

Being aggrieved by and dissatisfied with the impugned order defendant no. 1 has preferred the present revisional application.

Mr Kumar Jyoti Tiwari, learned advocate appearing on behalf of defendant no. 1-petitioner submits that the suit property originally belonged to one Bimal Ranjan Kusari who died issueless on 10th December, 2007 leaving behind his wife Bhakti Kusari as his only heir and legal representative to inherit his estate. The said Bhakti Kusari died on 25th January, 2019. The applicant is claiming his right over the suit property through one Papia Bhatatacharya, who happens to be the sister of the existing plaintiffs. The property of Bimal Ranjan Kusari devolved, on his demise, unto his wife Bhakti Kusari and never devolved upon the mother of the applicant, namely, Papia Bhattacharya, who pre-deceased both Bimal Ranjan Kusari and Bhakti Kusari and died on 24th March 2006. As per Section 15 of the Hindu Succession Act and Schedule II, the plaintiffs are the only legal heirs of Bhakti Kusari being her husband's heirs. Thus, applicant-opposite party no.4, Saikat Bhattacharya is not a necessary

party and should not have been added as plaintiff in the suit. In view of his above submissions, he prays that the impugned order be set aside.

In reply to the aforesaid contentions, Mr Kaustav Chandra Das, learned Advocate representing the applicant-opposite party no. 4 at the outset submits that the plaintiff nos. 1 to 3 never objected to the applicant being added as plaintiff no. 4. Further whether the applicant has any right over the suit property or whether there is any devolution of interest upon him in terms of Section 15 of the Hindu Succession Act are precisely mixed question of facts and law which are matter to be decided by the Trial Court in the suit after taking evidence. During the course of hearing Mr Das files the copy of the written statement submitted by defendant no. 1. He draws the attention of Court to paragraph 13 of the written statement wherein he indicates that defendant no. 1-petitioner has stated that the legal heirs of deceased sister of plaintiff no. 1 is a necessary party and ought to have been arrayed as a party in the suit and, thus, by such pleadings defendant no. 1-petitioner has accepted the applicant to be a necessary party in the suit and, therefore, the impugned order passed considering the pleadings of the parties should be affirmed in the interest of justice.

From the plaint it is revealed that the plaintiffs have filed a suit for cancellation of deed of gift being no. 160200203 for the year 2018. The defendant no. 1-petitioner entered appearance and files its written statement. Subsequent thereto, the applicant has filed application to be added as a party. At paragraph 13 of the written statement, it is found that the defendant no. 1-petitioner has categorically stated that the plaintiffs ought to have made the legal heirs of deceased sister of plaintiff no. 1 as party to this proceeding. Such pleadings squarely lead to the fact that the defendant no. 1-petitioner concedes that the applicant is a necessary party. Mr. Tiwari referring to Section 15 of the Hindu Succession Act strenuously argues that the applicant-opposite party no.4 has claimed right through Papia Bhattacharya who is the sister of the plaintiffs. However, said Papia Bhattacharya never inherited the property of Bhakti Kusari which devolved from Bimal Ranjan Kusari and thus the applicant-opposite party has no right, title and interest over the suit property. Though such argument has been advanced on behalf of defendant no.1-petitioner yet whether there is devolution of interest in the suit property upon the applicant or not are matters to be decided in the trial after taking the evidence. I find substance in the submissions of Mr.

Das that such aspect are matters pertaining to mixed question of facts and law.

In view of the above discussions, I find that there is no such impropriety in the impugned order passed by the Trial Court to call for interference.

In the result, **C.O. 2202 of 2022** stands dismissed. The impugned order of the learned trial Court is affirmed.

All connected applications, if any, stands disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)