

16.8.2023
ct. 236
sk,sl. 70

C.O. 1786 of 2014

Bhakta Ranjan Das-vs-Anil Kajiwal

Mr. Debashis Chakraborty
...for the petitioner.

Mr. Malay Bhattacharyya
Ms. Sudipa Sengupta
...for the O.P.No.1.

Heard Mr. Chakraborty, learned counsel for the petitioner and Ms. Sengupta, learned counsel representing the opposite party no.1.

This application under Article 227 of the Constitution of India impeaches the Order No. 25 dated 21st March, 2014 passed by the learned Civil Judge, Junior Division, Bishnupur in Title Suit No. 90 of 2012.

By the order impugned the learned trial court was pleased to dismiss the suit on contest against the defendant no. 1 without cost while dismissing an application under Order 1 Rule 10 of the Code of Civil Procedure filed by the plaintiff.

Briefly stated in a suit for declaration and permanent injunction the plaintiff/petitioner Bhakta Ranjan Das impleaded Shri Anil Kajiwal, Shri Arun

Chottopadhyay, Shri Barun Chattopadhyay as defendants. After the summon served upon the defendants, came back with the endorsement that the defendant nos. 2 & 3 were dead. The plaintiff thereafter took out an application under Order I Rule 10 of the Code of Civil Procedure which the learned trial court refused to accept holding, inter alia, that it was a ploy to implead the legal representatives of defendant nos. 2 & 3 in a roundabout manner who died long before the filing of the instant suit.

According to Ms. Sengupta, the plaintiff ought to have filed an appeal challenging the order of dismissal of the suit and this application under consideration is not maintainable.

From the attending facts of the case, it is admitted that the plaintiff filed the suit against the defendant nos. 2 & 3 who were not alive when the suit was instituted. The fact was not known to the plaintiff and he was left with no other option but to implead the legal heirs of the defendant nos. 2 & 3 under Order 1 Rule 10 of the Code of Civil Procedure. There was no room to invoke the provision of Rule 4 of Order XII of the Code of Civil Procedure as the deceased defendants died not during pendency of the suit but before filing of the suit. Therefore, the order impugned suffers from perversity.

Learned trial court had no reason to dismiss the suit in its entirety without disposing of the application filed by the defendant no. 1 as well. The impugned order does not make any whisper as to the fate of the petition filed by the defendant no. 1 on 16 January, 2014.

Be that as it may, the order impugned suffers from perversity and in my view this is a fit case to invoke of the provision of Article 227 of the Constitution of India and to set aside the order impugned.

Learned trial court is directed to re-admit to the suit to its original file and to dispose of the application under Order 1 Rule 10 of the Code of Civil Procedure, in the light of observation made hereinabove and to proceed with the suit in accordance with law.

With this revisional application is disposed of.

(Siddhartha Roy Chowdhury,J)