

28. 02. 2023

BP  
Sl.11  
Court No. 654

**IN THE HIGH COURT AT CALCUTTA  
Civil Revisional Jurisdiction  
Appellate Side**

**CO 2407 of 2022**

**Rajendra Prasad Singha**

.....Petitioner.

**versus**

**Madhu Sudhan Singha & Ors.**

.....Opposite parties.

Mr Arup Krishna Das  
..for the petitioner

Affidavit-of-service filed on behalf of the  
petitioner is taken on record.

This revisional application has been preferred  
by plaintiff no.2-petitioner under Article 227 of the  
Constitution of India challenging order no.110 dated  
13<sup>th</sup> July, 2022 passed in Title Suit No. 45 of 2014 by  
the learned Civil Judge (Junior Division), Additional  
Court, Asansol rejecting the application dated 12<sup>th</sup> July,  
2022 of plaintiffs under Order I Rule 10 of the Civil  
Procedure Code for adding the sister of defendant no.1  
namely, Niati Roy in the suit as a necessary party.

In spite of service of the copy of the  
application none appears on behalf of the opposite  
parties.

The brief fact of the case is that the petitioner

and others as plaintiffs filed a suit for declaration of title and adverse possession and permanent injunction. In the aforesaid suit the plaintiffs filed an application under Order I Rule 10 of the Code of Civil Procedure for adding Smt Niati Roy, sister of defendant no.1, as a necessary party since she is one of the legal heirs of late Amar Chandra Singha (uncle of the plaintiffs). Upon hearing, the learned trial court rejected the application of the plaintiffs for addition of parties.

Being aggrieved by and dissatisfied with the impugned order the plaintiff no.2 has filed the present revisional application.

Mr Arup Krishna Das, learned advocate for the petitioner submits that it is the specific case of the plaintiff-petitioner that his father acquired the schedule property by dint of two registered Deeds being no. 4685 for the year 1958 purchased in the *benami* of his younger brother Amar Chandra Singha and Deed no. 5816 for the year 1962 purchased in the *benami* of defendant no.1 Madhu Sudhan Singha, son of late Amar Chandra Singha and, therefore, Niati Roy being the daughter of late Amar Chandra Singha and one of his legal heirs is a necessary party in the proceeding. In the aforesaid backdrop he prays for setting aside the impugned order of the learned trial court with a direction to add Niati Roy as a defendant in the suit.

Upon perusal of the impugned order it is found that the learned trial court rejected the application for addition of party on the ground that no reason has been stated in the application for adding sister of defendant no.1, when deed standing in the name of defendant no.1 is under challenge in the suit.

From the copy of the plaint annexed to the application at paragraph no.3, it is found that the plaintiff has contended therein that his father purchased the suit property in the *benami* of his younger brother Amar Chandra Singha *vide* registered Deed no. 4685 for the year 1958 and in the *benami* of defendant no.1 Madhu Sudhan Singha *vide* Deed no. 5816 for the year 1962. Thus the subject matter of the suit relates to two Deeds, one in the *benami* of Amar Chandra Singha (since deceased) and other in the *benami* of Madhu Sudhan Singha (defendant no.1). Therefore the observation of the learned trial court that only the deed standing in the name of defendant no.1 is under challenge is not the correct state of affairs. The defendants in their written statement have stated that Amar Chandra Singha died in the year 1959 leaving behind his wife Swetbarani Singha, one son Madhu Sughan Singha (defendant no.1) and daughter Niati Singha as his legal heirs at the time of death. Since one of the aforesaid deeds as per plaint case was executed

in the *benami* of Amar Chandra Singha, hence Niati Roy, being the daughter and one of the legal heirs of late Amar Chandra Singha is a necessary party and therefore is required to be impleaded as defendant.

In view of the above discussion, the impugned order no. 110 dated 13 July 2022 of learned trial court is set aside.

Let the name of Smt Niati Roy be added as a defendant in Title Suit No. 45 of 2014 pending before learned Civil Judge (Junior Division), Additional Court, Asansol.

The revisional application, being **C.O. 2407 of 2022** stands allowed and disposed of.

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 given to the parties upon compliance of all necessary legal formalities.

**(Bivas Pattanayak, J.)**

