

Item No. 25
10.10.2023
Court. No. 19
GB

C.O. 2926 of 2023

Taimur Ali & Ors.
Vs.
Ayesa Bibi & Ors.

*Mrs. Sulekha Mitra,
Mr. Manas Kumar Das*

...for the Petitioners.

The revisional application arises out of an order dated May 18, 2023, passed by the learned Civil Judge (Senior Division), 1st Court at Malda in Partition Suit No.405 of 2013. The petitioners are the plaintiff nos.8 to 13 in the suit.

By the order impugned, six applications for addition of party filed by six different individuals who allegedly had purchased a part of the undivided property from one Hamful, (the predecessor-in-interest of the plaintiff nos. 1 to 7) was allowed. Further, the learned court was also of the view that although the plaintiff nos.8 to 13 objected to the applications for addition of party, inter alia, stating that Hamful could not have transferred 25 decimals when admittedly 14.9 decimals had been acquired by the government for construction of the highway, the claim to right, title and interest of the subsequent purchasers should to be adjudicated in the suit.

The learned court found that a preliminary decree was passed declaring the shares of the parties. Until the final decree was passed, partition by metes and bounds could not be effected. Even if Hamful's share was acquired by the government, the said fact was not included in the pleadings and the preliminary decree was passed without taking into

account the aforementioned fact. No prayer was made by the plaintiffs for correction or amendment of the preliminary decree after the portion of the property decreed was acquired by the state government. If the subsequent purchasers from Hamful were not added as parties as they claimed right, title and interest in the joint properties upon purchase from the predecessors of the plaintiff nos.1 to 7, complete adjudication of the partition suit would not be accomplished and would lead to multiplicity of proceedings.

Whether Hamful had any transferable right beyond 14.9 decimals or whether the share of Hamful had been acquired by the government, would only be decided upon trial and upon recording proper evidence. The court also expressed an opinion that the state government should be added as a party. The truth or falsity or validity of the transfer in favour of the parties who sought to be added, were matters of trial. As no final decree had been drawn up and the applicants who prayed for addition were, *prima facie*, found to have interest in the property in question. Their addition was necessary for proper adjudication of the entire dispute in the partition suit and for declaration of the shares. Upon the commissioner having found that a part of the property which was decreed in preliminary form had been acquired by the State and a party had been sold out to the strangers, their addition was inevitable. It is also a well-settled proposition of law that there can be more than one preliminary decree in the suit.

Under such circumstances, the entire issue and the contention of the petitioners with regard to the sale, acquisition, right of Hamful and the shares of the purchasers from Hamful, shall be decided afresh. The order impugned does not suffer from irregularity.

As the partition suit has been pending since long, the learned court below shall make sincere effort to proceed in accordance with law and pass necessary orders, upon adjudication of the issues which have been subsequently raised within a period of four months from reopening of the court after the puja vacation.

With regard to the allegation that the purchasers from Hamful were trying to disturb the possession of the plaintiffs and change the nature and character of the property in question, this Court is of the view that the petitioners are always at liberty to bring the said fact to the notice of the learned court below and pray for necessary orders, if the situation so demands. If such prayer is made, the learned court shall decide the question upon granting adequate opportunity to all the contesting parties to contest in such proceeding.

The revisional application is, thus, disposed of.

All the parties are directed to act on the basis of the learned advocate's communication and/or server copy of this order.

(Shampa Sarkar, J.)