

11.10.2023
Sl. No.16(DL)
srm

C.O. No. 3232 of 2023
Techno India Project Pvt. Ltd.
Versus
Sri Utpal Dey & Ors.

Mr. Sukanta Chakbraborty,
Md. Zubair Ahmed
...for the Petitioner.

The revisional application arises out of an order dated July 21, 2023 passed by the learned Civil Judge (Senior Division), 2nd Court at Chinsurah, Hooghly, in Title Suit Nno.341 of 2011.

By the order impugned, the learned court below rejected an application filed by the defendant No.15/petitioner, praying for rejection of the plaint.

It appears from the record the suit is running *ex parte* against the defendant Nos.1 to 14, although they have filed their written statements. The defendant No.15 is contesting the suit.

According to the defendant No.15/petitioner, the plaint should be rejected on the following grounds:-

- (a) All the necessary parties and co-sharers were not impleaded.

(b) Although, Ishan Chandra Dey and Harish Chandra Dey were missing for more than seven years and there was a presumption of civil death, unless there was a declaration to that effect by a civil court, they should have been added as defendants.

(c) State of West Bengal is a necessary party.

(d) There were other co-sharers whose whereabouts were not known to the plaintiff, and they were not added as defendants. (Paragraph 31 of the plaint has been referred to).

(e) The defendant No.15 was impleaded as a party to the proceedings, but the deed by which the defendant No.15 had acquired right, title and interest in a portion of the property, which was a subject matter of the dispute, had not been challenged in the suit, although their share had been claimed.

The learned court below, upon adjudication of the dispute, came to the conclusion that the plaint disclosed a cause of action and the plaint did not appear on the face of it to be barred by any law. Even if the plaint case was weak and would ultimately result in dismissal of the suit, such factor cannot be taken into account while adjudicating a prayer for rejection of the plaint. The plaint, read as a whole, disclosed a

cause of action. The same did not appear to be barred by law. In case of any doubt, it was in consonance with the principles of justice that the plaint should be sustained rather than rejected. Decisions of the Hon'ble Apex Court were also considered by the learned court below.

Having heard Mr. Chakraborty, learned Advocate appearing on behalf of the petitioner, this Court is of the view that the plaint discloses a cause of action. The plaintiff, as the sole heir of late Radha Raman Dey has prayed for partition of his share in the property. According to the plaintiff, Radha Raman Dey was the heir of Satkari. Satkari was the heir of Nandalal Dey. Nandalal Dey had got 'be-meadī' patta from the Collector on December 5, 1861 along with Yoggeshwar Dey. Both Yoggeshwar Dey and Nandalal Dey were granted non-agricultural tenancy, by then Collector of Hooghly and were recognised as joint tenants under the Collector, each having half share in the lands settled by Collector. Nandalal had two sons, Satkari Lal Dey and Nani Lal Dey. Yoggeswar and Nandalal were 'Prajas'. Nandalal bestowed his share in the suit property to his son Satkari Lal Dey along with other self-occupied property. Nani Lal, other son of Nandalal, also sold the property to the elder brother Satkari. Satkari's name was not included during the CS operation as his cousins who

were entrusted with the job did not take any action. After the death of Satkari, his only son Radha Raman Dey requested the predecessor of the defendant Nos.1 to 14 to amicably partition the suit property. The request of Radha Raman for partition of the property was not accepted. Radha Raman Dey had bequeathed all his property to the petitioner, as his only son. In the meantime, some of the defendants allegedly sold the part of the undivided property to the petitioner. That all the heirs of Yoggeshwar could not be impleaded as their addresses were not known, but the plaintiff had prayed leave to implead them after their addresses were obtained. The plaintiff prayed for a preliminary decree for partition of the suit property declaring $\frac{1}{2}$ share in the property. Further prayer was made for a declaration that the sale deed No.01323 for the year 2011 executed by the defendant Nos.1 to 14 and other co-sharers in favour of the defendant No.15 was null and void and not binding upon the plaintiff.

Under such circumstances, this Court does not find any reason to interfere with the order impugned.

The challenge to the deed of the petitioner is available in the plaint. The truth or correctness of the averments in the plaint would be decided at the trial, on evidence. If there are parties who have not been impleaded, the learned court can

always pass necessary orders. In any event, if the suit suffers from mis-joinder and non-joinder of parties or/of causes of action, the suit shall fail.

The decision cited by Mr. Chakraborty in the matter of Noreshar Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi (D) thr. LRs. & Ors. reported in 2022 SCC OnLine SC 1307, cannot be made applicable at the stage of rejection of the plaint. The Apex Court had held that when a suit had failed at the trial on the ground of non-joinder of parties, a superior court could not direct the parties to be impleaded in the suit at the stage of second appeal and cure such defect.

Under such circumstances, the revisional application is not entertained and the same is dismissed.

The law is well settled. A plaint can be rejected only if upon a meaningful reading of the plaint either no cause of action is disclosed or the plaint appears to be barred by law. The defects of mis-joinder and non-joinder can be cured and the learned court below is empowered by law to add or delete any person if the court deems it fit.

The petitioner can also file necessary application for impleading the parties who have been allegedly left out from array of defendants. If such application is filed the same shall be decided on contested hearing.

The issues raised by Mr. Chakraborty shall be decided as the main issues in the suit, including the point of maintainability of the suit on the ground of non-joinder of parties.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)