

July 12, 2023
Sl. No.5
Court No.19
s.biswas

CO 3136 of 2022
With
CAN 1 of 2023

Gita Rani Nanda
vs.
Debasish Das

Mr. Tanmoy Mukherjee
Mr. Bibekananda Tripathy
... for the petitioner
Mr. Sibasis Ghosh
Mr. Kalipada Chakraborty
Mr. Dwarika Nath Mukherjee
... for the opposite party No.1

Affidavit of service filed by the petitioner is taken on record. Despite service, none appears on behalf of the added opposite party Nos.2 to 20 who have already been served.

Re: **CAN 1 of 2023**

As the original copy of the application CAN 1 of 2023 cannot be traced in view of the change in determination of the courts, Mr. Mukherjee, learned advocate for the petitioner, is allowed to supply a photocopy of the said application. The same is taken on record upon consent of the parties and treated to be a true copy of the original application.

Office is directed to track the original copy of the application and tag the same, with the file.

CAN 1 of 2023 is an application filed under Order 1 Rule 10 of the Code of Civil Procedure for adding the defendant nos.2 to 20, in the revisional application being C.O. 3136 of 2022, who, according

to the learned advocate for the petitioner, were left out by mistake from the array of opposite parties.

The mistake is bona fide and not intentional. The petitioner does not stand to benefit, by leaving out those defendants. This court is of the view that such application must be allowed.

In view of the disposal of the application, the opposite party/defendant nos.2 to 20 be added in the array of the opposite parties as stated in paragraph 3 of the application.

CAN 1 of 2023 is thus disposed of.

Re: **CO 3136 of 2022**

As the added opposite parties have already been served and affidavit of service has been filed, the revisional application is taken up for hearing. It is also a matter of record that apart from defendant Nos.1, 5, 10 and 20, none of the defendants contested the suit. Moreover, an objection to the application for addition of party was only filed by the plaintiff. Hence, the matter is taken up and disposed of in the presence of the plaintiff.

This revisional application has been filed challenging the Order No.55 dated July 18, 2022 passed by the learned Civil Judge (Junior Division), Contai, 1st Court, Purba Medinipur in Title Suit No.183 of 2014.

By the order impugned, the learned court below rejected the application filed under Order 1 Rule 10 of the Code of Civil Procedure by the petitioner.

The petitioner sought to be added as a party on the ground that parts of the land in respect of which the plaintiff had filed the suit for declaration and injunction and alternatively for partition and declaration of his share, had been settled in favour of many persons including the petitioner. The petitioner herself had acquired the right, title and interest in respect of a portion of the alleged undivided plot no.102/402, corresponding to J.L. No.89, Mouza-Zafarchak, Touzi No.2935, P.S.-Khejuri, District-Purba Medinipur, by virtue of deed of gift executed sometime in 2016, by one Ananta Kumar Nanda. It has been specifically stated that Ananta Kumar Nanda acquired right, title and interest in the said portion of the undivided plot of land by virtue of a deed of sale, executed between Purnendu Mandal and Ananta Kumar Nanda, sometime in 2014.

The plaintiff objected to such application and submitted that the petitioner did not acquire any right, title and interest in the alleged plot. The deed of gift, if at all executed, was collusive, illegal and void and a mere paper transaction, which was never acted upon. Based on such paper transaction and

void document, the petitioner could not be added as a party to the suit.

Mr. Mukherjee, learned advocate for the petitioner, submits that the prayers would reflect that the petitioner had claimed 57 decimals out of the entire plot no.102/402, J.L. No.89, Mouza-Zafarchak, Touzi No.2935, P.S.-Khejuri, District-Purba Medinipur. Prayers have been made for a declaration of right, title and interest of the plaintiff in respect of the 'Ka' Schedule property, for declaration that the defendants did not have any right, title and interest in respect of the said property, permanent injunction and in the alternative for declaration of share of the plaintiff in the 'Kha' Schedule property which comprises the same plot.

Mr. Mukherjee points out to the objection filed by the plaintiff and submits that when the objection itself indicates that the plaintiff denied the right, title and interest of the petitioner in respect of the plot No.102/402, in which the suit property is situated and alleged that any claim on the basis of the void deed of gift would be baseless, it was all the more necessary that the petitioner be added. For proper adjudication of the shares and demarcation of the suit property, the petitioner should be added.

Mr. Ghosh, learned advocate appearing for the plaintiff/opposite party submits that carriage of proceedings lie in the hand of the plaintiff. It is for the plaintiff to decide whether the parties shall be added or not. Moreover, the deed of gift relied upon was baseless, collusive and a mere paper transaction. On the basis of said deed of gift, the petitioner would not acquire any interest in the plot No.102/402. The petitioner was not a necessary party for adjudication of the suit.

Mr. Ghosh has also relied on the decision of the Hon'ble Supreme Court in the matter of ***Sudhamayee Pattnaik and Others vs. Bibhu Prasad Sahoo and Others***, decided in ***Civil Appeal No.- 6370 of 2022***. According to Mr. Ghosh, paragraphs 5 and 7 of the said judgment would clearly negate the claim of the petitioner. The Hon'ble Apex Court held that non-impleading a party by any person as defendants against the wish of the plaintiff shall be at the risk of the plaintiff. In the said case, subsequent purchasers were not impleaded as party defendant in the suit. It is further submitted by Mr. Ghosh that when the defendant had filed a counter-claim claiming right, title and interest over the suit property as also for permanent injunction, the question of impleading a third party as a party defendant, would not arise.

Having heard the learned advocates for the respective parties, this court finds that the plaintiff claimed exclusive right, title and interest in respect of the plot no.102/402, J.L. No.89, Mouza-Zafarchak, Touzi No.2935, P.S.-Khejuri, District-Purba Medinipur, including pukur, pukur par, which was more fully described as 'Ka' Schedule property, in the plaint. The alternative prayer for partition has been made in respect of the 'Kha' Schedule which is pukur and pukur par in plot no.102/402 of Mouza-Zafarchak, P.S.-Khejuri.

The defendant Nos. 1, 5, 10 and 20 contested the suit by filing a written statement with a counter claim. They claimed right, title and interest in the 'Ka' Schedule property. The said defendants denied the right, title and interest of the plaintiff in respect of the Ka Schedule property. In the written statement, it was further stated that the plaintiff did not acquire any right, title and interest from Sandhya Rani in respect of the Ka Schedule property. It was also submitted that the transaction between Sandhya Rani and the plaintiff was illegal and erroneous. That the said defendants claimed right, title and interest in respect of the same plot No.102/402 and in the Ka and Kha Schedule property.

The petitioner claims to be another co-sharer in respect of the plot no.102/402, J.L. No.89, Mouza-Zafarchak, Touzi No.2935, P.S.-Khejuri, District-Purba Medinipur. The petitioner is not claiming as a subsequent purchaser from the defendants. The plot is allegedly not demarcated as yet. Thus, doctrine of *lis pendens* will not apply in this case, and the decision cited by Mr. Ghosh is not applicable.

The petitioner being apprehensive that the decision in the suit with regard to the 'Kha' Schedule property and demarcation thereof and the declaration of shares of the plaintiff and the defendants in respect of the 'Ka' and 'Kha' Schedule property may result in denial of the petitioner's share in the same plot, which the petitioner claims through a deed of gift executed by Ananta Kumar Nanda, has filed an application for addition of party. Although Mr. Ghosh submits that the petitioner if threatened by the suit, can file a separate suit, this court is of the view that the same would amount to multiplicity of proceedings. It would be prudent to add the petitioner as a party as the claim and the counter-claim of the plaintiff and the defendants deal with the entire 'Ka' and 'Kha' Schedule which is part of plot no.102/402, J.L. No.89, Mouza-Zafarchak, Touzi No.2935, P.S.-Khejuri, District-Purba Medinipur. This order is being passed especially

taking into consideration the objection of the plaintiff that the alleged deed of gift executed in favour of the petitioner was void, illegal and had not been acted upon. This objection itself shows that the apprehension of the petitioner may be correct and in such circumstances, the petitioner deserves to be added as a party to the suit for an effective and proper adjudication with regard to the right, title and interest of all the parties in respect of the Ka and Kha Schedule property. The petitioner may not be a necessary party, but is a proper party.

The learned court below shall add the petitioner as the defendant no.21 in the suit, on the basis of the order of this court.

The defendant no.1 shall file a written statement. As the plaint is a part of the civil revisional application, further service of the plaint upon the added defendant is dispensed with. The written statement shall be filed by the added defendant within three weeks from date. The plaintiff shall be given opportunity to amend the plaint in order to deal with the contentions of the added defendant. The learned court below shall allow such amendment. The amended plaint will be filed within three weeks upon receipt of the written statement to be filed by the added defendant. Additional issues shall be framed by the learned

court below on the basis of the written statement of the petitioner and the amended plaint, if required. The evidence of PWs shall be recalled for further evidence, if necessary, in view of the additional facts which are going to be incorporated in the plaint as also in the written statement to be filed by the added defendant. Thereafter, the suit shall proceed expeditiously in view of the age of the suit.

The revisional application is allowed and disposed of. This court has not expressed any opinion with regard to the merits of the suit or the claim and counter-claim of the parties including the claim of the added defendants.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)