

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Civil Revisional Jurisdiction)**

Present:

The Hon'ble Justice Krishna Rao

CO 41 of 2023

Prabin Kharel

Versus

Bijay Kumar Sah & Ors.

Mr. Rajat Das

Ms. Anumita Lahiri

Ms. Srijana Thapa

.....For the petitioner.

Mr. Amit Sinha

.....opposite parties.

Hearing Concluded On : 13.06.2023

Judgment on : 15.06.2023

Krishna Rao, J.:

1. This present revisional application filed by the petitioner against the order passed by the Learned Civil Judge, Senior Division, Siliguri by an order no. 51, dated January 17, 2023 in Title Suit No. 130 of 2013,

wherein the application filed by the plaintiff under Order 1, Rule 10 (2) of the Code of Civil Procedure is allowed.

2. The opposite party/plaintiff has filed a suit against the petitioner/defendant no. 1 for a Specific Performance of Contract and Perpetual Injunction. The petitioner being the defendant is contesting the suit by filing written statement.
3. The opposite party/ plaintiff had filed an application for grant of temporary injunction and the Learned Court has granted injunction and being aggrieved with the order of injunction, the petitioner/ defendant had preferred a Miscellaneous Appeal before the Division Bench of this Court being FMA No. 1260 of 2015 and by an order dated May 15, 2015, the Hon'ble Division Bench has modified the order of injunction as follows :

“1] The Respondent/Plaintiff will deposit an amount of ₹ 12,20,000/- in the Trial Court within four weeks from today.

2] The Trial Court shall invest the same in a nationalized bank in short-term deposits till the suit is finally disposed of.

3] The Trial Court shall pass necessary orders with respect to the amount invested and the interest thereon when the suit is finally disposed of.

4] If the aforesaid amount is not deposited within the stipulated time, the injunction granted by the Trial Court will stand vacated automatically.

The appeal and the application are disposed of accordingly.”

4. The opposite party/ plaintiff had also filed an application under Order 1, Rule 10 (2) of the Code of Civil Procedure for addition of parties on

the ground that the petitioner/defendant had transferred part of the suit property measuring an area of 72.6 decimals to third party namely Smt. Neha Aggarwal by a registered Deed of Conveyance No. I-634 in the year 2015 and thereafter the said Neha Aggarwal out of the said purchased land had further transferred an area of 12 kathas in favour of Sri Suresh Prasad Sah, Smt. Manju Devi Sah and Sri Ajay Kumar Sah by a registered Deed No. I-68 of 2017.

5. The learned Civil Judge, Senior Division at Silliguri had allowed the said application on the ground that the purchasers are the necessary parties for proper adjudication of the suit.
6. Mr. Rajat Das, the learned Advocate representing the petitioner submits that the opposite party/plaintiff failed to comply with the order passed by Hon'ble Division Bench of this Court by depositing an amount of Rs.12,20,000/- in the trial Court and only for the purpose of re-imposing the order of injunction passed by the Hon'ble Division Bench, the plaintiff/opposite party has filed an application for addition of parties.
7. Mr. Das submits that the plaintiff/opposite party failed to make out the case that the opposite party is ready and willing to perform his part. He further submits that the said fact is proved that the opposite party has not deposited the amount of Rs. 12,20,000/-being the balance consideration before the trial Court as per the order passed by Hon'ble Division Bench.

8. Mr. Das submitted that the proforma opposite parties are not the necessary party for adjudication of the suit but the Learned Judge failed to appreciate the fact and allowed the application filed by the opposite party.
9. Mr. Das has relied upon Section 19 of the Specific Relief Act and submits that as per the said provision there is no necessity for impleading the proforma opposite parties in the suit.
10. Mr. Amit Sinha, learned Advocate representing the opposite party no.1 submitted that the opposite party has filed the suit for Specific Performance of Contract with respect of land measuring an area of 3.00 acre recorded in L.R. Khatian No. 300, in L.R. Plot No. 595 and 597 in Mouza-Khaprul J.L. No. 14, Pargana - Pathargahata, Police Station – Matigara, District - Darjeeling and during the pendency of the suit, the opposite party came to know that on 12th August, 2015, the petitioner/defendant no. 1 had registered a Deed of Conveyance in favour of Smt. Neha Agarwal in respect of the land measuring 72.6 decimals out of 9 bigha or 3.00 acres in the aforesaid landed property and subsequently Smt. Neha Agarwal had further enter into a Deed of Conveyance on 30th November, 2016 with Sri Suresh Prasad Sah, Smt. Manju Devi Sah and Sri Ajay Kumar Sah with respect of the land measuring 12 Cottah or 0.198 Acres in the aforesaid property and Khatian has also been corrected in the names Suresh Prasad Sah and Ors.

- 11.** Mr. Das further submitted that the petitioner/ defendant no. 1 had the knowledge with regard to the agreement entered between petitioner/defendant no. 1 and the opposite party/plaintiff with respect of the suit property, in spite of the same the petitioner/defendant no. 1 had entered into Deed of Conveyance and thus the subsequent purchasers are the necessary party for the purpose of proper adjudication of the suit filed by the opposite party. He further submits that the Learned Judge had rightly allowed the application filed by the plaintiff/opposite party.
- 12.** Heard the Learned Counsel for the respective parties perused the materials on record and the impugned order.
- 13.** The opposite party/plaintiff had filed the suit for specific performance of contract wherein it is the case of the opposite party that on November 28, 2008, a sale agreement of the property was executed between the petitioner and the opposite party no.1 with respect of the property for a total sum of Rs. 25,20,000/- out of which the opposite party no.1 had paid an amount of Rs.13 lakhs and the balance amount of the Rs. 12,20,000/- is required to be paid by the opposite party at the time of registration of the Sale Deed but the petitioner/ defendant no. 1 failed to come forward for registration of Deed.
- 14.** The petitioner has admitted with regard to the registration of Deed of Conveyance dated August 12, 2015 with Smt. Neha Agarwal and the

petitioner also admitted that Neha Agarwal had further entered into a Deed of Conveyance with Suresh Prasad Sah, Manju Devi Sah and Ajay Kumar Sah.

Order I, Rule 10 (2) of the CPC, 1908 reads as follows :

“10 (2) Court may strike out or add parties. –
The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

15. From a plain reading of expression used in Sub-Rule (2) Order I, Rule 10 of the Code of Civil Procedure “*all the questions involved in the suit*” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff and the defendant and the defendant inter-se or question between the parties to the suit and the third party.
16. In the present suit admittedly, the plaintiff/opposite party has filed the suit for specific performance against the defendant no. 1/petitioner and the petitioner ignoring the agreement alleged to have been entered between the parties had entered into a Deed of Conveyance with the third party and thus this Court is of the view that the third party is the

necessary party for adjudication of the suit filed by the plaintiff/opposite party.

17. The Learned Judge while allowing the application filed by the plaintiff/opposite party has rightly held that the subsequent purchaser has purchased the portion of the suit land being fully aware of the contract between the petitioner and the opposite party no. 1. The purchasers have not acquired the title on the basis of any decree or share of co-owner in a partition suit. The presence of the subsequent purchasers is very much necessary for complete adjudication of the suit.

18. In view of the above, this Court finds that the Learned Civil Judge, Senior Division has not committed any illegality by allowing the application filed by the opposite party/plaintiff under order I, Rule 10 (2) of the Code of Civil Procedure, 1908 and thus the impugned order does not required any interference.

19. CO No. 41 of 2023 is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)