

30.11
2023

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

C.O. 43 of 2023
Cradle Computer Pvt. Ltd.
-Versus-
Sri Uttam Saha & Ors.

Mr. Rajat Das
Ms. Srijana Thapa

Mr. Bikramaditya Ghosh
Ms. Supriya Singh
Ms. Sriya Basu

...For the Opposite Parties

This is an application under Article 227 of the Constitution of India preferred by the petitioner against order No. 68 dated 4th June, 2022 passed by the learned Civil Judge (Junior Division) at Jalpaiguri in Title Suit No. 90 of 2011. By the impugned order learned Court below was pleased to allow the petition under Order I Rule 10 of the Code of Civil Procedure and thereby allowed the petitioners of said petition to implead in the suit as defendant Nos. 5 to 12.

The present petitioner as plaintiff instituted the aforesaid suit, being Title Suit No. 90 of 2011 for declaration of title of the plaintiff and for injunction. The defendants, namely defendant Nos. 1-4 who are opposite party Nos. 1-4 herein appeared in the suit but the defendant No. 4 only filed written statement.

During pendency of the suit defendant Nos. 5 to 12 / proforma opposite party Nos. 5 to 12 herein filed an application under Order I Rule 10 of the Code for impleading them as defendants.

Mr. Rajat Das, learned Counsel appearing on behalf of the petitioner submits that copy of the said application was never served upon the plaintiff / petitioner, which was collected by him later on. He further submits that the Court below by the impugned order allowed the said application *ex parte* and impleaded the opposite party Nos. 5 to 12 herein as defendant Nos. 5 to 12 in the said suit.

Mr. Das further submits that the learned Judge failed to appreciate the facts and circumstance of the case in its proper perspective and did not apply his judicial mind while allowing the said application. In fact the Court below has misdirected himself in observing that the opposite party Nos. 5-12 are necessary parties in the suit and failed to consider that in the suit for declaration and injunction, the plaintiff, being the *dominus litus*, has only exclusive choice to add the party/defendants. He further submits that the presence of the defendant Nos. 5-12 is not at all required for the purpose of adjudication of the present suit and as such the order impugned suffers from inherent defect and liable to be set aside.

Mr. Bikramaditya Ghosh, learned Counsel appearing on behalf of the opposite parties submits that the principal defendants or plaintiffs of the suit have no right, title or interest in the said land and the principal defendants of the Title Suit, being No. 92 of 2016 after trespassing into the plaintiffs land wrongly mutated their names in a portion of such land on the basis of their alleged fake gift deed and recorded their names in L.R. Khatian Nos. 112, 113, 114 and 115.

The proposed defendants are the necessary parties in the said suit and the suit is required to be heard and disposed of in their presence. In such circumstances, the Court below was justified in passing the order impugned which does not call for any interference.

I have considered the submissions made by both the parties. In the present case it is specifically alleged by the plaintiff / petitioner that copy of the application filed under Order I Rule 10 was not served upon him and as such plaintiff did not get any opportunity to defend the said application and it is further alleged that the order impugned was passed behind his back, since the copy of the said application was not served upon him, though choice is upon the plaintiff to decide whether he wants to fight against the said petitioners or not.

On perusal of the order impugned also it appears that the order is cryptic and is not supported by reason. It would not be out of context to quote the relevant portion of the order impugned :

“Heard learned Advocate appearing for the petitioners, who submitted that the plaintiff has filed this suit against the four defendants. He further submitted that present petitioners are the owners in respect of suit property. Therefore, these propose defendants are necessary parties for proper adjudication of this suit.

On careful perusal of the instant application and record this Court thinks that the instant suit should be heard in presence of the petitioners. The plaintiff will not be prejudiced in any manner if the petitioner be impleaded as party in this suit.

Considering the above facts and circumstances, this Court inclined o allow the instant application.

Hence, it is,

ORDERED

That the instant application filed by the petitioners under Order I Rule 10 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure is considered and allowed on ex parte but without any costs.

Let the present petitioners be impleaded as the Defendant Nos. 5 to 12 respectively in this suit.”

From a bare perusal of the aforesaid order it is clear that the Court below was satisfied that the present suit is required to be heard in presence of the petitioners merely because learned counsel for the petitioners submitted that petitioners/ proposed defendants are the owners of the suit property. No reason has been assigned as to why court below placed reliance upon the submission of petitioners that they are the owners of the property, specially when plaintiffs could not get the opportunity to contest and court ultimately came to the conclusion that the plaintiff will not be prejudiced in any manner, if the petitioners be impleaded in the present suit, without hearing the plaintiffs.

In view of the above, I find that the order impugned is perverse being not support by reason and thereby resulted failure of justice and as such the impugned order dated 4th June, 2022 is hereby set aside.

Learned Court below is directed to give opportunity to plaintiff to file written objection if any and to re-hear the application filed by the petitioners under Order I Rule 10 of the Code of Civil Procedure after giving opportunity to both the parties to contest and to write an order afresh supported by reasons, without being influenced by any observations made herein, preferably within 30 days from the date of communication of this order.

Accordingly, the revisional application, being C.O. 43 of 2023 and connected applications are accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)