

May 16, 2024
Sl. No.A 143
Court No.19
s.biswas

CO 57 of 2024

Sri Subrata Talukdar
vs.
Debraj Talukdar and others

Mr. Gopal Chandra Ghosh
Mr. Sayan Sengupta

... for the petitioner

1. The revisional application arises out of an order dated December 2, 2023 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat in Misc. Case No.34 of 2023. Misc. Case No.34 of 2023 was an application under Order 9 Rule 13 of the Code of Civil Procedure. The petitioner/plaintiff prayed for dismissal of the misc. case on the ground that the same was not maintainable.
2. It is submitted that Title Suit No.22 of 2005, is a partition suit. After the preliminary decree was passed, the opposite party no.1 was added in the suit and the learned court can always amend the preliminary decree by declaring the share of the opposite party No.1. The adjudication of the misc. case would unnecessarily reopen the entire issue. Thus, the prayer was made for dismissal of the misc. case.
3. The learned court found that there were allegations that the added defendant had not

been made a party to the partition suit, in a collusive manner. The opposite party No.1 contended that after the demise of Debashis Talukdar, the father of the opposite party No.1, other parties colluded and obtained the preliminary decree, without impleading the said opposite party. Thus, the preliminary decree, in the absence of the added defendant was irregular. Hence the defendant/opposite party No.1 prayed for setting aside of the preliminary decree.

4. According to the learned court, in view of the above allegations, adjudication of the misc. case was necessary. The Misc. case could not be dismissed as not maintainable at its nascent stage. The order impugned does not call for any interference.
5. The contention of Mr. Ghosh that the opposite party no.1 had already been included in the proceedings and his right as co-sharer had been recognized, will be decided when the Misc. case is heard. All the issues which have been raised by Mr. Ghosh can always be raised at the final disposal of the misc. case. The misc. case and the application for stay shall be disposed of together by the learned court, within three months from date.

6. Accordingly, the revisional application stands disposed of.
7. All parties to act on a server copy of this order.
8. 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.)