

22.03.2024
Sl. No.15(DL)
srm

C.O. No. 272 of 2023

Md. Salim & Anr.

Versus

**The Committee of Management of Hoogly Imambarah (The
Haji Mohammad Mohosin Wakf Estate) & Anr.**

Mr. Jayanta Samanta,
Mr. Dipjyoti Chakraborty,
Mrs. Karunamoyee Samanta,
Mr. Rajdeep Adhikary

...for the Petitioners.

Mr. Manas Kumar Das,
Mr. Aritra Kumar Thokdar

...for the Opposite Party No.1.

Mr. Arif Ali,
Mr. S. Bhattacharjee

...for the Opposite Party No.2.

1. The revisional application arises out of an order dated September 3, 2022 passed by the learned Additional District Judge, 1st Court at Alipore, South 24-Parganas, in Title Appeal No.49 of 2017.
2. By the order impugned, the learned appellate court added the Committee of Management of Hooghly Imambarah, represented by Mr. Mirza Ali Abbas Shiraji, i.e., the opposite party No.1, as a party in the appeal.

3. Mr. Jayanta Samanta, learned Advocate for the petitioners submits that Hooghly Imambara could not be added as a respondent in an appeal when the said Imambara was not a party in the suit. Moreover, the suit was also not maintainable as the disputed property was a wakf property. Allowing the application for addition under Order 1 Rule 10 of the Code of Civil Procedure was not the proper procedure. The opposite party No.1 deposed as PW2, but did not seek addition in the suit.
4. The opposite party No.2 filed the suit for declaration and injunction claiming that the petitioners did not have any right, title and interest in respect of the suit property and his father, late Mohammad Hossain was a lessee under the Hooghly Imambara. The opposite party No.1 claimed a right through his late father.
5. The allegation in the plaint was that a vacant land in the property was attempted to be forcefully taken over by the petitioners. Hence the suit was filed.
6. The plaint discloses that the Hooghly Imambara was the owner who had leased the property to the plaintiff's father. After demise of the plaintiff's

father, the plaintiff continued to be in possession as a lessee.

7. Mr. Das, the learned Advocate for the opposite party No.1 submits that it was an admitted position that the property belonged to the Hooghly Imambara and the property was declared as a *kharij Towliat* property. The father of the plaintiff was inducted as a lessee and the plaintiff at best could continue as a lessee, but neither party could claim ownership of the property. The Hooghly Imambara was aggrieved by the decision in Title Suit No.266 of 2005. Hence, they prayed for addition as a party.
8. Considered the rival contentions of the parties. The fact remains that the plaint case discloses that the Hooghly Imambara is the owner. Whereas, a rival title has been claimed by the petitioners. It is submitted that dismissal of the suit may have adversely affected the interest of Hooghly Imambara. However, the proper course of action for Hooghly Imambara to contest the judgment and decree passed in Title Suit No.266 of 2005, as an aggrieved party, would be to prefer a separate appeal from the judgment and decree, with the leave of the court.

9. In the matter of *My Palace Mutually Aided Co-operative Society vs. B. Mahesh & Ors.*, decided in *Civil Appeal No.5784 of 2022*, the Hon'ble Apex Court held as follows :-

“30. Sections 96 to 100 of CPC deals with the procedure for filing appeals from original decrees. A perusal of the above provision makes it clear that the provisions are silent about the category of person who can prefer an appeal. But it is well settled legal position that a person who is affected by a judgment but is not a party o the suit, can prefer an appeal with the leave of the court. The *sine qua non* for filing an appeal by a third party is that he must have been affected by reason of the judgment and decree which is sought to be impugned.”

10. Thus, the order impugned is set aside.
11. The opposite party No.1 is granted liberty to approach the learned court by filing an application seeking leave to appeal. If such application is allowed, Hooghly Imambara shall act and proceed in accordance with law. The learned court shall decide the application independently and on the pleadings.
12. The revisional application is, thus, disposed of.
13. There shall be no order as to costs.
14. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)