

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

***C.O. 1031 of 2022
Swapna Nandi and Ors.***

VERSUS

Anita Pal and Ors.

For the Opposite Party No. 14:

Mr. Ranjan Kali, Adv.
Mr. Ashis Kumar Dutta, Adv.

Last Heard on: May 17, 2024

Judgment on: June 14, 2024

Biswaroop Chowdhury,J:

The petitioner before this Court is a plaintiff in a Suit for partition and is aggrieved by the order dated 7th December 2021 passed by the Learned 3rd Civil Judge (Senior Division) at Howrah in Title Suit No. 532 of 2021. The Petitioner being aggrieved by the Order dated 7th December 2021 passed by the Learned Court below in impleading opposite Party no-14 in Title Suit No. 532 of 2021 has come up with the instant application under Article 227 of the Constitution of India.

The case of the opposite Party no-14 before the Learned Court below may be summed up thus.

1. The opposite party no-14 having received a letter/notice dated 15-09-2021 send by Sukanta Das of Dakshin Buxarah Polen Para P.O.- Buxarah District Howrah – 711110 have come to know that in the said title suit pending before Learned Court below an order of injunction is passed by the Learned Court on 04.09.2021 and more surprisingly in 25-09-2021 the local Jagacha Police intimated the husband of the petitioner viz. Shri Shivajee Thakur that in view of the said Order of injunction the work being made by the petitioner be stopped and accordingly the petitioner has been compelled to stop the construction work though she holds all the required documents and sanction granted by the Statutory Authority.
2. The opposite party no-14 is the owner of 07 Cottah – 04 Chittaks – 18 sqft of Land at R.S. Dag No-307 by purchase vide two deeds of conveyance dated 12th Day of February 2008, and 13th Day of February 2008 respectively executed by one Smt Mousumi Polley and the other by one Anath Bandhu Pal. After purchase the Howrah Municipal Corporation has duly amalgamated both the said properties. The DL and LRO, Howrah vide order dated 27-07-2015 has further been pleased to allow the conversion of the said properties 'Danga to Bastu' Land. The Land Reforms Authority has provided LR.

Khaitan No – 3879 and L.R. Dag No. 437 (of R.S. Dag No. 307) in her name.

3. The Opposite Party no-14 on perusal of the said letter/notice of said Sukanta Das and also upon further enquiry through her husband has come to know that one Smt. Swapna Nandi and 13 others including said Sukanta Das has filed the said Suit against Smt Anita Pal and 12 others (i.e. legal heirs of deceased Hari Pada Nandi) for partition of the said suit properties alleging that no registered Deed of Partition or Decree of partition has been passed amongst Hari Pada Nandi and Badal Chandra Nandi, ie, the predecessor in interest of Plaintiffs and defendants and as such suit for partition is filed further challenging the partition Deed dated 14-02-1990. It is further learnt that R.S. Plot No. 307 corresponding to L.R. Khaitan No. 3879 involves one of the suit properties which exclusively belongs to this applicant but the applicant owner is left out.
4. The order of injunction is obtained by the plaintiff by suppressing the following facts.
 - i) By a Registered Deed of Partition dated 22-02-1925 recorded in Book No.I, Volume No. 21, Pages 88-95, being No 1573 for the year 1925 executed and registered by and between Hari Pada Nandi and Bisnupada Nandi both sons of Late Srimanta Nandi they partitioned all their properties including the purchased property of this petitioner.

- ii) By another Deed of Partition dated 19-05-1954 recorded in Book No. I, Volume No-23 pages 72-77, being No. 1472 for the year 1954, executed by and between Badal Chandra Nandi, Haladhar Nandi and Murari Mohan Nandi, all sons of Bishnupada Nandi they Partitioned their respective joint properties amongst themselves.
- iii) On the other hand by another Deed of Partition dated 14-02-1990 recorded in Book No I, Volume No-16, Pages – 75-89, being No. 629 for the year 1990, the heirs of Hari Pada Nandi effected Partition of their allotted share.
- iv) The predecessor-in-interest of the present plaintiffs viz. Barun Nandi and others filed Title Suit No. 13 of 2008 in the Learned Trial Court against the heirs of Late Hari Pada Nandi for partition of the Suit Properties in respect of Dag No. 306-309 of the self same Mouza ie. the present suit properties.
- v) By order dated 23-05-2008 Learned Court below was pleased to reject the said plaint of Title Suit No. 13 of 2008 by invoking Order 7 Rule 11 of the Code of Civil Procedure with an observation that the suit property already partitioned in the year 1925, 1954, and 1990. Appeal was preferred against the said order which was also dismissed on 25/08/2010.
- vi) Opposite party no-14 Smt Manjeh Thakur filed Title Suit No. 42 of 2009 before the Learned Court of 6th Civil Judge (Junior

Division) at Howrah against Barun Chandra Nandi and others and the said suit was ultimately compromised vide Order No. 26 dated 21-09-2010 whereby said defendants unequivocally admitted that over the property purchased by this Smt Manju Thakur (LR. Khaitan No. 3879) the said defendants had/have no claim.

- vii) The above suit relating, to the petitioner's property is apparently barred by estoppels as well as constructive Resjudicata, and thus not maintainable in law as well as in fact.
5. That the opposite party no-14 is an owner/Raiyat in respect of 07 Cottah-04 Chittak-18 sq ft of land with structure at R.S. Dag No. 307 corresponding to L.R. Dag No. 437 under L.R.Khaitan No. 3879 at Mouza at P.S.-Jagacha District-Howrah and since her property is involved in the above Suit without impleading her, and the order of injunction has caused hardship to her and further she being owner of her property is the interested person as well as essentially a necessary party and as such in her absence there cannot be any effective adjudication of the merit as well as the dispute involved in the above suit and as such the petitioner being a necessary party should be impleaded in the said suit. That apart the said order of injunction has caused hardship to her and unless she be impleaded in the suit her interest cannot be protected in any manner and thereby she would suffer irreparable loss and injury.

The plaintiff/petitioner filed written objection to the petition for impleadment as party filed by the opposite party no – 14.

It was contended by the plaintiff/petitioner that the said application was filed to delay and drag the instant proceedings. It was further contended that the plaintiff got first time knowledge about the compromise decree dated-29-09-2010 as passed in connection with Title Suit No. 42 of 2009 which has been proceeded by the alleged constituted Attorney of the present plaintiffs, and on the basis of which the opposite Party no-14 claims as owner of property measuring about 07 Cottah, 04 Chatak, 18 sq ft.R.S. Dag No. 307 being part of the suit property. It is contended that after knowing the said facts and in order to secure their right title and interest and possession in respect of other and to avoid multiplicity of proceedings they have already filed an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure to delete the portion and the said application is yet to be disposed of. It is also contended that if the amendment application as filed by the plaintiff is allowed then the portion as claimed by the present petitioner, Smt Manju Thakur would automatically be deleted and/or expunged from the subject matter of the instant suit.

Upon hearing the application for amendment and the application for addition of party learned Court below was pleased to allow the petition for amendment. The Learned Court below was pleased to direct the plaintiff to file amended plaint and amended injunction application within 14 days.

Learned Court below was further pleased to allow the application for addition of parties by observing and directing as follows:

‘Heard Ld. Advocates for both sides. Considered. It is a fact that the prayer for amendment of plaint has been allowed by this Court. But there are still facts not disclosed by the plaintiffs in their plaint which can be brought to fore by the petitioner. Petitioner has filed number of document such as partition deeds, order in other cases involving the property of the plaintiffs which need to be looked into by the Court before proceeding with the suit especially when the petitioner has filed application under Order 7 Rule 11 of CPC. I think the petitioner must be given an opportunity to ventilate his interest in the suit. If at later stage it is found that the presence of Petitioner is not required for proper adjudication of the suit then the court has every option to expunge him from being a party to this suit. But at this stage, I think the person proposed to be added is a necessary party to the suit for proper adjudication of the suit and the same will not change the nature and the character of the suit.

Hence it is ORDERED that the petition under Order 1 Rule 10(2) read with Section 151 of CPC filed by Petitioner namely Manju Thakur on 23.11.2021 is hereby allowed on contest but without costs.

Let the name of Manju Thakur be added as defendant no.14 in the cause title of the plaint as per schedule to the Petition dated 23.11.2021.’

The petitioner/Plaintiff being aggrieved by the Order dated 07/12/2021 passed by Learned Trial Court has come up before this Court under Article 227 of the Constitution of India.

It is the contention of the Petitioner that the impugned order passed by the Learned Judge is misconceived and not tenable in law. It is further contended that the Learned Trial Court erred in concluding that the third Party has filed several documents that needs to be looked into by the Trial Court before proceeding with the suit. It is also contended that the Learned Trial Court failed to understand that the right and title of third party has been adequately protected and the plaintiffs have agreed not to touch upon it. The petitioner contends that, the Learned Trial Court failed to appreciate that the third party has no more direct or indirect interest in the subject matter of the suit after the order of amendment was passed by the Trial Court and therefore opposite party no-14 has no right to be impleaded as defendant. The petitioner further contends that the Learned Trial Court failed to appreciate that the Learned Court should not compel the plaintiffs to sue the third party herein against whom the plaintiffs seeks no relief in any manner whatsoever. It is also contended that the third party being allowed to join as defendant will not only delay the proceeding but also things will unnecessarily be complicated.

Pursuant to the filing of this application notice was issued upon Opposite Party no-14/caveator. With regard to other opposite parties no notice was served and the same is being dispensed with.

At the time of hearing of the application, Learned Advocate for the petitioners did not appear to make submissions with regard to the case. In spite of granting adjournment to the Learned Advocate for the Petitioners to appear and argue the case or to file written notes of arguments no argument was advanced. As power of High Court under Article 227 of the Constitution is supervisory in nature and is not an appeal under Code of Civil Procedure the matter was not dismissed for default but considered on merits, on the basis of materials on record and upon hearing Learned Advocate for the opposite party no-14.

Learned Advocate for the opposite party no-14 submits that his client is a necessary party in the partition suit pending before the Learned Court below and the Learned Court was justified in impleading opposite party no-14 in the partition suit. Learned Advocate further submits that his clients name was deliberately left out and the order of injunction was obtained by suppressing material facts by the plaintiff. Learned Advocate also submits that the order passed by Learned Trial Court is well reasoned and may not be interfered with.

Upon hearing the Learned Advocate for the opposite party no-14 and upon considering the facts of the case this Court is of the view that in order to decide the issue first and foremost it is necessary to consider the provisions contained in Order 1 Rule 10(2) of the Code of Civil Procedure.

Sub-Rule 10(2) of Rule 1 CPC provides as follows:

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.

The Hon'ble Patna High Court in the case of Ratan Kumar Sarangi VS Viskwanath reported in AIR-2023 Patna 146. observed as follows:

‘9’ The provisions of Order-I, Rule 10(2) of the Code are very wide and the powers of the Court are equally extensive. Even without an application to be impleaded as a party, the Court may, at any stage of the proceedings order that the name of any party, 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.

10. It is well settled that the underlying principle regarding the addition of parties is that there must be finality to litigation and to secure that purpose it would be incumbent upon the Court to add a party whose presence would be necessary to put an end to all the controversy in the litigation finally “questions involved in the suit” referred to in Order 1, Rule 10, means not only the

questions involved in the suit originally framed between the parties to the suit but also any dispute between the parties of the suit and third party and that the object of the provision is that where several disputes arise out of on subject matter all the parties interested in such disputes should be brought before the Court and all questions in contest between them should be completely settled in the action.’

The Hon’ble Supreme Court in case of Mumbai International Airport Private Limited V Regency Convention Center and Hotels Private Limited and ors. reported in AIR-2010 S.C 3109 observed that the Court is given the discretion to add as a party, any person who is found to be necessary party or proper party. A ‘necessary party’ is a person who ought to have been joined as a party and in whose absence no effective decree could be passed by the Court. It has been held that if a ‘necessary party’ is not impleaded the suit is liable to be dismissed. A ‘proper party’ is a party who though not a necessary party is a person whose presence would enable the Court to completely effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be proper or necessary party, the Court has no jurisdiction to implead him against the wishes of the plaintiff.

In Vidur Implex and Traders(P) Limited and others V Tosh Apartments(P) Ltd. (2012) 8 SCC. 384: (AIR 2012 SC. 2925) in paragraph 41, THE Hon’ble

Supreme Court has given broad principles which should govern disposal of an application for impleadment are as under:

“41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiffs or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3 A proper party is a person whose presence would enable the Court to completely effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4 If a person is not found to be a proper or necessary party the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However if the applicant is guilty of contumacious conduct or is a beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restrain order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

Upon perusing the petition and the materials on record particularly the application for addition of party filed by the opposite party no-14 before the Learned Court below, it will appear that the suit property which was mentioned at the time of institution of the plaint has a history of transfer and litigations. These facts are not fully incorporated in the plaint. The ground for not mentioning these facts is lack of knowledge as contended by the plaintiff. However the facts not incorporated in the plaint should be permitted to be incorporated in the written statement whichever is in the knowledge of opposite party no-14. After incorporating these facts in the written statement Issues, are to be framed which may include the ISSUE of maintainability of the suit. Unless the opposite party no-14 is a party in Title Suit No. 532 of 2021 pending before Learned 3rd Civil Judge (Senior Division) at Howrah, there is no scope for him to file written statement and incorporate relevant facts.

As an Order of Injunction is still existing with regard to the property owned by the opposite party-no-14 the opposite party no-14 is a necessary party in the suit. In the event the order of Injunction is vacated the opposite party no-14 will still continue to be a proper party because his presence would

enable the Court to completely, effectively and properly adjudicate upon all matters and issues.; However as Courts have power to strike out any party at any stage of the proceedings if the Court so thinks fit such discretion is also available to the Learned Court below. Before deleting the name of the opposite party no-14, the Learned Court below shall first of all consider the report of Learned Special Officer to be appointed for the purpose of inspection secondly consider the written statement of the opposite party no-14 and the ISSUES framed and thirdly the Learned Court below shall ensure that there is no order of injunction on the property owned by the opposite party no-14.

Thus Sri Animesh Paal Learned Advocate High Court Calcutta having seat at Bar Association Room No-15 and Mobile No, 8981837017 is appointed as special Officer to cause inspection of the suit property and property owned by opposite party no-14, being land of 7 cottah, 4 chittacks 18 Square feet comprised in RS Dag No. 307. Learned Special Officer shall upon visiting the suit property prepare a sketch map of the suit property which was mentioned in the schedule at the time of institution of the suit. Upon preparing the sketch map special officer shall indicate the portion which is now owned by the opposite party no-14. Learned Special Officer shall also take photographs of the property of opposite party no-14 where construction is alleged to be taking place. In the event special officer is of the view that assistance of survey Commissioner is necessary Learned Special Officer may appoint survey Commissioner the cost of which is to be borne by the opposite party no-14. Such inspection shall be carried out within 3 weeks from the date of

communication of the order. Upon causing the inspection Learned Special Officer shall submit his report before Learned Trial Court within 1 week from the date of completion of inspection.

Learned Special Officer is entitled to a remuneration of Rs. 6,000/- (Rupees Six Thousand only) to be paid by the opposite party no-14. The opposite Party no-14 shall serve copy of this Revisional Application with all annexures upon the Learned Special Officer. Learned Special Officer shall cause inspection upon notice to petitioners/plaintiffs and opposite party no-14 and their Learned Advocates.

Upon considering the report of Learned Special Officer and the written statement to be filed by opposite party no-14 and the issues to be framed and upon vacating the interim order of injunction already passed on the property owned by respondent no-14 if the Learned Court below is of the opinion that opposite party no-14 be struck out from the cause title of the parties prior to passing of preliminary Decree Learned Trial Court may pass necessary orders. On the other hand if the Learned Court is of the view that the opposite party no-14 should remain till disposal of the partition suit being Title Suit No. 532 of 2021, Learned Trial Court should proceed accordingly.

Thus this revisional application stands dismissed. Order dated 7th December 2021 passed by the Learned 3rd Civil Judge (Senior Division) at Howrah in Title Suit No. 532 of 2021 is affirmed. It is however made clear that this Order will not stand in the way of Learned Trial Court in subsequent stage

of proceedings to consider striking out name of opposite party no-14 in accordance with the observation hereinabove.

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

(Biswaroop Chowdhury, J.)