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Ct. No. 04

akd

F.M.A. 393 of 2023
CAN 1 of 2023

Biswanath Das & Ors.
Vs.
Narayan Chandra Das & Ors.

Mr. Tapash Kumar Dey,
Ms. Saswati Ghosh Sinha.
... for the appellants.
Mr. Siba Prasad Ghose.
... for the respondents.

The application for injunction filed by the plaintiffs/appellants is rejected by the Trial Court primarily on the ground that the co-sharers of the plots for which the partition suit is filed have not been impleaded in the said suit.

The plaintiffs/appellants claimed themselves to be the heirs of Keshab Chandra Das through his daughter and filed a suit for declaration of shares, partition and separation thereof against the other heirs and legal representatives of Keshab Chandra Das. The defendants/respondents after appearing on a notice having received under Order XXXIX Rule 3 of the Code of Civil Procedure took a defence that the suit is bad for non-joinder of necessary parties, as the co-shares of Keshab Chandra Das have not been impleaded in the suit.

Though there has been no disclosure of the names of the co-sharers of the said Keshab Chandra Das in the written objection as well as the written statement filed by the contesting defendants / respondents, yet the Court on the basis of the documents produced by the plaintiffs/appellants found that the co-sharers of Keshab Chandra Das have not been impleaded as party and, therefore, it would not be proper at this stage to pass a temporary

injunction as prayed for.

The learned Counsel for the appellants is very much vocal in his submission that the suit for partition is restricted to a land belonged to Keshab Chandra Das and the heirs and successors of Keshab Chandra Das having impleaded in the suit, the Trial Court committed serious error in holding that the co-sharers have not been impleaded as party.

At the first blush, we found support in the contention of the plaintiffs/appellants but after perusing the documents annexed to the application for stay in order to ascertain the correctness of the findings recorded in the impugned order, we found that the L.R. Record of Rights is also annexed to the said application, which, in fact, had been relied upon by the learned Judge in the Trial Court.

The Law in relation to partition of an immoveable property is somewhat settled that if all the co-sharers have not been impleaded as party in the suit, the suit for partition is liable to fail. It is also no longer res-integra that the suit for partial partition cannot be maintained unless all the joint properties are brought within the hotchpot.

Taking clue from the aforementioned proposition of law, let us consider whether the findings of the Trial Court that the Keshab Chandra Das did not hold the property exclusively but was a co-sharer along with others, are correct.

The learned Counsel for the appellants has relied upon the L.R. Record of Rights annexed at page 51 of the said application and submits that all the plots mentioned therein are the subject matter of suit for partition instituted by his clients.

We have seen from the bare reading of entry made in the L.R. Record of Rights that Keshab

Chandra Das was holding a share in the plot of land as mentioned therein and not in its entirety. Take for example, the first entry made in the L.R. Record of Rights where Dag No. 687 is shown to be a paddy land having a total area of 1.31 acres out of which Keshab Chandra Das is shown to have a share to the extent 0.2734, which is equal to 0.236 acres. Since Keshab Chandra Das has not been shown to own the entire plot of land comprised of 1.31 acres, he is regarded as a co-sharer in respect of the said plot and, therefore, it is imperative on the part of the plaintiffs to include the other co-sharers, who are holding the right, title and interest in respect of the remaining land.

A point is sought to be urged before us by the learned Counsel for the appellants that since the partition suit is restricted to the share of Keshab Chandra Das and it is not possible to gather or collect any information regarding other co-sharers, there is no fetter on the part of the Court to pass a preliminary decree declaring share of the parties to the suit.

We are unable to comprehend the aforesaid proposition of law for the simple reason that in a partition suit the Court is not only required to pass a preliminary decree but must also pass the final decree segregating and dividing the larger property in commensurate with the shares declaring in the preliminary decree by metes and bound.

We are unable to appreciate the stand of the learned Counsel for the appellant that the course adopted by the Court after passing of the preliminary decree for the purpose of final decree is the subsequent event for which the Court should not wait or detain itself. The purpose of partition suit would be frustrated if ended at the stage of a preliminary

decree, as the party, who filed the said suit, intended to separate his share from the rest of the co-sharers or to the exclusion of such co-sharers and to enjoy exclusively.

For such reasons the concept of bringing all the co-sharers on record is inevitable and all the joint properties within the folds of the schedule of the said plaint is also inflexible.

We thus do not find that there is any error or infirmity in the impugned order passed by the Trial Court.

However, we make it clear that certain observations made in the impugned order have persuasive impact on the maintainability of the suit which should not have been done at the interlocutory stage and, therefore, we hold that those observations are mere tentative in nature.

With the above observations, the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

