

05.01.2024
Court No. 19
Item no.13
CP

C.O. No. 1368 of 2023

Smt. Rekha Mondal

Vs.

Sandip Maji & Ors.

Mr. Arup Krishna Das

Mr. Abdus Salam

..... for the petitioner.

1. The plaintiff no. 2, in a suit for partition, has challenged an order dated November 1, 2022, passed by the learned Civil Judge (Senior Division), 1st Court at Asansol in Title Suit No. 27 of 2018.
2. By the order impugned, an application under Order 22 Rule 1(3)(b) of the Code of Civil Procedure was rejected. The plaintiff wanted to expunge the names of the defendant nos. 1(a), 1(b) and 2 from the array of defendants in the said suit. According to the plaintiff, the predecessors of the said defendants had already divided their shares in the property left behind by Raghunath Maji and they were enjoying their respective shares on the basis of such amicable settlement. That their names were also mutated in respect of the properties which they were enjoying. Thus, defendant

nos. 1(a), 1(b) and 2, were not necessary parties as they had no connection with the property of Kalchand.

3. The plaintiffs and the defendants were heirs of Kalachand and the property left behind by Kalachand was sought to be partitioned by the plaintiff. There is a specific objection on the part of the defendant no. 3 that the heirs of Krishnagopal and Nanigopal were enjoying the property in excess of the shares of their predecessor which included the property of Kalachand. That Krishnagopal and Nanigopal had sold out portions of the property which were in excess of that which were enjoyed by them. The record of rights were also not prepared correctly. The plaintiff in collusion with the defendant nos. 1(a), 1(b) and 2 had made such prayer in order to deprive the defendant no. 3. That all the properties of Raghunath Maji should be brought in the common hotchpotch as Raghunath Maji left behind three sons – Kalachand, Krishnagopal and Nanigopal. Each of the sons had one-third share in the property. Kalachand died and left behind the plaintiff and the defendant nos. 3 to 17. The defendant nos. 1(a) and 1(b) are the

heirs of Nanigopal and the Defendant no. 2 is the heir of Krishnagopal.

4. Upon hearing the parties, the learned court was of the view that when there was a counter allegation by the defendant no. 3 that the heirs of Krishnagopal and Nanigopal had been occupying more than their shares and that the mutation/record of rights would not reflect the correct quantum which ought to have enjoyed by the parties, the names of the defendant nos. 1(a), 1(b) and 2 could not be expunged from the array of defendants. The court was of the view that no document with regard to the alleged amicable settlement between the heirs of Raghunath had been filed before the court, which would indicate that Krishnagopal and Nanigopal were enjoying their partitioned demarcated shares.
5. This court does not find any reason to interfere with the order impugned. There is an allegation that the defendant Nos.1(a) and (b) and 2 were enjoying property beyond what was being occupied by the predecessors. The factum of amicable settlement cannot be taken as partition by metes and bounds, in my, prima facie, view, without recording evidence.

6. The revisional application is accordingly disposed of. There shall be no order as to costs.

7. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)