

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

Present:

**The Hon'ble Justice Biswaroop Chowdhury**

***C.O. 2173 of 2022***

***with***

***C.O. 2176 of 2022***

***with***

***C.O. 2178 of 2022***

***Effect Publication***

***VERSUS***

***Rita Bhattacharya & Anr.***

For the petitioner:

Mr. Dyutiman Banerjee, Adv.

Mr. Deb Kumar Deashi, Adv.

Mr. Vishal Mallick, Adv.

For the opposite party no. 1:

Mr. Sukanta Chakraborty, Adv.

Mr. Trinath Gangopadhyay, Adv.

Mr. Anindya Halder, Adv.

**Judgment on: January 05, 2024**

**Biswaroop Chowdhury,J:**

The petitioners in the instant revisional applications were the applicants in application for addition of parties and are aggrieved by the Orders dated

5/5/2022, passed by Learned Civil Judge Senior Division 2<sup>nd</sup> Court at Barasat North 24 Parganas, in Title suit No – 480 of 2017.

The case of the applicants/petitioners in the Learned Court below may be summed up thus:

1. The plaintiff has filed the instant suit against the sole defendant and the same is pending before the Learned Court for adjudication.
2. That the plaintiff herein is trying to sell out the entire suit property to some local promoter and for that she is asking all the tenants over the suit property to quit and vacate immediately.
3. That the plaintiff did not mention about the presence and occupancy of the applicants/petitioners over the suit property and moreover she falsely stated that the sole defendant is in occupancy over the entire suit property.
4. That for proper adjudication it is necessary that the applicants be made party to this suit as one of the defendants.

The Learned Court below upon considering the said applications was pleased to reject the prayers of the petitioners for addition of parties by Order no – 56 dated 5/5/2022.

The petitioners being aggrieved by the order dated 5/5/2022 passed by the Learned Civil Judge Senior Division 2<sup>nd</sup> Court at Barasat North 24 Parganas in Title suit No – 480 of 2017 have come up with three separate revisional applications being C.O. No. 2173 of 2022, C.O No. 2176 of 2022, and C.O. NO.

2178 of 2022. As the three revisional applications arise from a common order involving similar facts and common question of law, these were taken up for analogous hearing.

It is the contentions of the petitioners that the Learned Trial Court below acted illegally in rejecting the applications of the petitioners without considering that the plaintiff did not file written objection against the application of the petitioners and as such the Learned Trial Court ought to have allowed the said applications of the petitioners. It is further contended that the Learned Trial Court acted illegally in rejecting the applications of the petitioners without considering that for proper adjudication of the suit, the petitioners are very much required to be added as party. It is also contended that the Learned Trial Court failed to consider that the right of the petitioners will be prejudiced if the petitioners are not impleaded as party to the said proceedings.

Pursuant to filing of these applications notice was issued upon opposite Party no – 1/Plaintiff in the three applications, and the opposite Party no – 1/Plaintiff appeared and contested the applications. As proforma opposite party no – 2 is the defendant in the suit and any order passed in this application will not prejudice the said opposite party the service of notice upon the said opposite party is dispensed with.

Heard Learned Advocate for the petitioners and Learned Advocate for the opposite party no – 1/plaintiff. Perused the petitions filed and materials on record.

Learned Advocate for the petitioners submit that the Learned Court below erred in rejecting the prayer of his clients for addition of party in the suit. Learned Advocate further submits that inspite of filing copy of Bank Pass book, Telephone Bills, Aadhar Card and Copy of Income Tax return Learned Court did not take the same into consideration before arriving at a decision Learned Advocate also submits that the petitioners have filed 3 separate suits against the plaintiff/opposite Party no – 1 praying for a decree of injunction that the petitioners should not be evicted by plaintiff/opposite party no – 1 save and except by due process of law which ought to have been considered by the Learned Court.

Learned Advocate for the opposite Party no – 1/Plaintiff submits that no relief is sought against the petitioners thus the Learned Court rightly rejected the prayer of the petitioners for addition of party. Learned Advocate further submits that in the event the petitioners have an independent right in the suit property they can take steps in accordance with law in the event the decree if passed is sought to be executed against them.

Learned Advocate relies upon the following two decisions.

- **Kanak Lata Das and others Vs Naba Kumar Das and others**

(Reported in (2018) 2 SCC. P. 352.)

- **Bimal Kumar Goenka. Vs Sanjay Kumar Jaiswal and ors.** (In C O No. 3975 of 2009)

In the case of Kanak Lata Das (Supra) the Hon'ble Supreme Court observed as follows:

11.1. "First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant tenant's eviction under the Rent Act exists. When these two things are proved, the eviction suit succeeds.

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but

fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails.

11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and cannot be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit.

11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”

In the case of Bimal Kumar Goenka (Supra) Learned Single Bench of this Hon’ble Court observed as follows:

8. “Referring to Section 16 of the West Bengal Premises Tenancy Act, 1956, he submits that creation and termination of sub-tenancies are required to be statutorily notified and the manner of giving notices relating to sub-tenancies under the West Bengal Premises Tenancy Act 1997 has been prescribed under

Rule 12 of the West Bengal Premises Tenancy Rules 1999. Relying on these provisions of law he submits that the Learned Court below, on failure of the petitioner to adduce prima facie document in support of his case that he was in lawful possession of the suit premises, either as tenant or as sub-tenant, went on to reject the petitioner's application for being added as a party. He has also relied on several Judgments to support his contention. Relying on a Division Bench judgement of this Court in the case of J.C.Chakraborty & Co. v. Santilal Rampuria, reported in 1998 (2) CHN 530, he submits that under the general law, no sub-tenant is required to be impleaded in an ejectment suit by a landlord against his tenant. On the same principle of law he has relied on a latter decision of another Division Bench judgement of this court in the case of Stockman Boarding House V Life Insurance Corporation of India reported in AIR 2000 Calcutta 219. Referring to paragraph 12 of the judgement, he submits that in the facts and circumstances of the instant case, the petitioner is not even required to be impleaded as a party to the ejectment suit. He also relies on two Single Bench Judgments of this Court: one in the case of B.K. Dutta v. Nita Madan, reported in AIR 1984 Calcutta 228 and the other, in the case of Kanak Prova Dey V. Asha Devi Jaiswal, reported in 2008 (112) CWN 329. He submits that in the present case, there is no question of multiplicity of proceedings, since in the ejectment suit the tenant has been made a party defendant and it was not necessary for the petitioner to be impleaded as an added defendant, in view of the applicable statutory provisions. Finally, the Learned Counsel for the opposite party No. 1 & 2 relies on a Division Bench

judgment of this Court in the case of Kanailal Das V. Hari Sankar Dutta, reported in Volume 86 CWN 549 (paragraph 5) and submits that since the landlord of the premises did not consent in writing to the sub-letting by the defendant in favour of the petitioner herein, the creation of the subtenancy was in violation of the applicable premises tenancy law and in the facts of the case the petitioner is not required to be impleaded as defendant to the ejectment suit instituted against the defendant, being the opposite party No. 3 herein.”

9. ‘After considering the submissions made on behalf of the parties and upon perusing the instant application under order impugned, I am of the opinion that this Court is not required to sit in appeal over the respective merits of the case made out by the parties before the Learned Court below. The learned Court below has considered that aspect of the matter and has simply opined that the petitioner had failed to adduce *prima facie* document in support of his petition that he was in lawful possession of the suit premise. Therefore, the Learned Court below found that the petitioner had no *locus standi* to contest the suit, at this stage, and hence, rejected the petition under Order 1 Rule 10(2) of the Code of Civil Procedure.’

Upon hearing the Learned Advocates and considering the facts of the case and the judicial decisions relied upon this Court is of the view that before considering the correctness of the Order passed by the Learned Trial Court it would be proper to peruse the application for addition of parties made by the petitioners. In the applications made by the petitioners it appears that the

petitioners have contended that they are in possession of the suit property and have filed 3 separate suits against the plaintiff/opposite party no-1 and further contended this fact is suppressed by the said opposite party in the Eviction Suit as the opposite party no-1 has mentioned that only opposite party no-2 is in occupation of the suit property. Although the petitioners have contended to be occupying portion of the suit property and have filed documents in that regard but they have not specifically stated under what capacity they are occupying suit property and who inducted them. Now so far opposite party-no-1/plaintiff is concerned it appears that the plaintiff did not file any written objection to the petition under Order 1 Rule 10(2) of the Code of Civil Procedure, regarding his stand about the right of the petitioners. By not filing the objection the plaintiff has also not disputed the petitioners occupying portion of the suit premises. The plaintiff/opposite party no-2 simply made submission that he is not proceeding for eviction against the petitioners. Learned Court below while rejecting the prayer for addition of parties was pleased to observe that the plaintiff/opposite party no-2 has no allegations against the petitioners nor does he want to proceed against them. Learned Court was further pleased to observe that the plaintiff is the master of his own suit and has every right to decide as to against whom he wants to proceed a suit filed by him and the Court cannot force a plaintiff to proceed against any person.

Now in order to consider the necessity of impleading the petitioners as parties and to analyse the Order passed by Learned Trial Court it is necessary

to consider the Provisions contained in Order 1 Rule 10 Sub-rule (2) of the Code of Civil Procedure.

Sub-rule 2 of Rule 10, Order 1 CPC provides as follows:

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 effectively and completely to adjudicate upon and settle all the questions involved in the suit be added.

Thus upon reading the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure it is clear that court has discretion to add necessary or proper party if the court so thinks fit and has also discretion to strike out unnecessary party. It is the settled law that it is open to the court to add any such person as necessary party in the suit to enable the court to effectively adjudicate the question involved in the suit. However for exercise of power under this rule the Court has to come to a finding that the party is a necessary or proper party.

In the case of Ramesh Hira Chand Kundan Mittal Mal Vs Municipal Corporation Greater Bombay reported in AIR (1992) SCW P-846 the Hon'ble Supreme Court observed as follows:

It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person necessary party is not merely that he has relevant evidence to give on some questions involved that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to action is so that he should be bound by the result of the action and the question to be settled, therefore must be a question in the action which cannot be effectively and completely settled unless he is a party.

The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is therefore necessary that the person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights.'

In the case of *Sampatbai Vs Madhusingh Gambhiji* reported in AIR-1960 MP-84 the Hon'ble Court observed as follows:

'The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising

on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervener in the enjoyment of his rights. It is not enough that the plaintiff's right and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject matter. The intervener must be directly and legally interested in the answers to the question involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally- that is by curtailing his legal rights. That is the test which has been applied in *Aman V Raphael Tuck and Sons Ltd* in connection with R S C Order 16 Rule 11 which is similar to Order 1 Rule 10 of the Code of Civil Procedure 1908.'

In the case of *Terai Tea Co Pvt Ltd V Kumkum Mittal* reported in AIR- 1994 Cal 191 this Hon'ble Court observed as follows:

'The power of a court to add a party to a proceedings cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right however will include necessarily an enforceable right.'

It is true that plaintiff is the *dominus litis*. He cannot be compelled to sue or proceed against any person against whom he does not claim any relief but such right is subject to some restrictions. Thus even if plaintiff proceeds against a particular person in a suit and not against others the proceedings should not

be such that it will affect the lawful rights of the persons not impleaded and not given an opportunity of being heard.

A lawful right in an immoveable property may be absolute right or a conditional right. For example a person may occupy an immoveable property as an owner, as tenant, as sub-tenant or as a licensee, and whether any person is to be impleaded in an eviction suit depends upon his nature of rights which will appear from the facts of every case.

A suit does not fail for mis-joinder of parties but it fails for non-joinder of necessary party. Thus from an-application for addition of party or otherwise if the Court is of the view that a person is a proper party in the suit the Court has discretion to implead the said person as a party in the suit. As the court has power to take into consideration subsequent event in a pending suit, and relevant facts, and has power to give judgment for or against any one or more of joint parties as per Order 1 Rule 4 of the Code of Civil Procedure, the court has discretion to take a pragmatic view with regard to addition of parties.

In the instant matter the Learned Court below did not address itself on the contentions made by the petitioners for addition of parties, neither did it consider the documents filed by the petitioners in support of the application. Learned Court simply on the submission of the plaintiff/opposite party no-1 that no relief is sought against the petitioners rejected the prayer for addition of parties without coming to a finding from the documents filed as to whether petitioners are proper party or not.

In the facts and circumstances the Order dated 05/05/2022 passed by the Learned Trial Court cannot be sustained and the same should be set aside.

The matter should be remitted back to the Learned Trial Court for reconsideration. However as the petitioners have filed documents to claim occupation in the suit property, but have not stated specifically under what capacity they are occupying and who inducted them, to expedite the matter it would be reasonable to appoint a special officer to visit the suit property cause enquiry and submit report as to the nature of possession of the petitioners in the suit property. Thus Sri Prosenjit Chatterjee Learned Advocate and member of the Bar Association City Civil Court Calcutta having phone no-8420443716 is appointed as special officer to conduct enquiry Learned Special Officer shall visit suit property, cause enquiry and ascertain as to the portion and area occupied by each of the petitioners in the suit property, and in what capacity they are occupying and who inducted them, and from which date. The said report shall be supported by sketch map, showing the area occupied. The Learned Special Officer may also collect relevant documents from the parties in this regard. Learned Special Officers shall be entitled to a remuneration of Rs. 15,000/-(Rupees fifteen thousand) to be paid in equal shares by the petitioners. The transport cost and incidental costs incurred by the Special Officer shall also be paid by the petitioners in equal shares. Upon completion of the enquiry the Learned Special Officer shall submit report before the Learned Trial Court. The enquiry shall be completed within 3 weeks from date and the report shall be submitted within 4 weeks from date. The special officer shall

conduct enquiry upon notice to all parties and their Learned Advocates. Copy of plaint and applications for addition of parties shall be furnished by the petitioners to the special officer.

Hence this Revisional Application stands allowed. Order dated 5/05/2022 passed by Learned Civil Judge Senior Division 2<sup>nd</sup> Court at Barasat North 24 Parganas in Title Suit No. 480 of 2017 is set aside. The matter is remitted to the Learned Trial Judge for reconsideration of the application for addition of parties filed by the petitioners upon receipt of the special officers report, as observed above. It is however made clear than pending enquiry of the special officer and reconsideration of application for addition of parties cross examination of D.W-1 or examination of any other witness of the defendant may be completed but the matter shall not be taken up for argument prior to said enquiry of special officer and reconsideration of application for addition of parties made by the petitioners.

**(Biswaroop Chowdhury, J.)**