

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE AJOY KUMAR MUKHERJEE

C.O.3435 of 2019

**Krishna Abasan Pvt. Ltd
Versus
Tapan Bhattacharya & Ors**

For the petitioner	:	Ms. Susmita Saha Dutta Mr. Niladri Saha Ms. Madhurima Basu
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Heard on	:	13.09.2024
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Judgment on	:	19.09.2024
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Ajoy Kumar Mukherjee , J.:

1. This application has been preferred against order dated 12.01.2018 passed by learned Civil Judge (Junior. Division) Utter Dinajpur in Title Suit no. 112 of 2010. By the order impugned learned court below rejected petitioner's prayer for adding him as defendant in the said suit.

2. The petitioner's contention is that the petitioner purchased the property in question from the opposite party no. 2 herein/defendant no. 1 by a registered deed in the year 2016. After purchase the petitioner came to

learn that his purchased property is the subject matter of aforesaid Title Suit no 112 of 2010. It further appears that by an order dated 8th January 2010, the learned court below passed an ad-interim order of injunction directing both the plaintiff and the defendant no. 1 and 2 /opposite party no. 1 and 2 herein to maintain status-que in respect of the suit property with a further direction not to change the nature or character of the suit property or transfer any portion of the property to any third party. Such interim order was thereafter extended till disposal of the suit.

3. However during pendency of the suit the defendant no. 1 sold the said property to the petitioner herein and the petitioner on good faith paid the consideration amount to his vendor/opposite party no. 2. As soon as the aforesaid factum of pendency of the suit came to the knowledge of the petitioner, he filed application under Order I Rule 10(2) of the Code of Civil Procedure (in short of the CPC) for adding him as a party/defendant contending that his purchased plot is under adjudication and also on the ground that any order that would be passed in the said suit, may affect the right title interest of the petitioner.

4. However learned court below after hearing the parties rejected the said prayer of the petitioner by the order impugned.

5. Being aggrieved by that order Mr. Dutta learned counsel appearing on behalf of the petitioner submits that the learned court below failed to appreciate that any declaration with regard to the schedule properties under the plaint in the said suit will also affect the interest of the petitioner and as such refusal by the court below to add petitioner as a party in the suit tantamount to gross injustice to the petitioner. The court below ought

to have appreciated that the petitioner has right of semblance as to the said vender/defendant no. 1 and therefore in the right of semblance the petitioner ought to have been impleaded in the suit. Moreover the court below failed to appreciate that the petitioner being in possession of the schedule property under the said deed, any order passed in the suit may also affect the petitioner in the event he is not given a chance to represent his case before the learned court below. Accordingly the petitioner has prayed for setting aside the order impugned and to add him as a party in the said suit.

6. Opposite party is not represented during the course of hearing.

7. I have considered submissions made by the petitioner.

8. On perusal of the subject matter of plaint filed in aforesaid Title Suit no. 112 of 2010, it appears that the said suit was filed by one Tapan Bhattacharya against petitioner's vendor Smt. Santana Bhattacharya/defendant no. 1 and others contending that the schedule mentioned suit property originally belonged to one Surendra Nath Paul who transferred the same in the year 1960 in favour of Kanan Bala Biswas and said Kanan Bala sold the said property in the year 1970 in favour of Sati Bhattacharya and handed over possession. Sati thereafter died leaving behind nine sons and one daughter as legal heirs in respect of "Ka" schedule property. Plaintiff accordingly claimed that he is owner of $\frac{1}{10}$ th share of the said "Ka" schedule property. Plaintiff's main allegation in plaint is that taking advantage of their mother's helplessness and also on the pretext of executing power of attorney, defendant no. 1 and 2 procured deed of gift which they never disclosed to the other brothers.

9. Since it is the specific allegation of the plaintiff that defendant no. 1 and 2 in collusion with each other had procured that deed, so plaintiff has prayed for cancellation of the said deeds dated 09.01.2002 being deed no. 320 and 321. In the petitioner's purchase deed it has also been specifically recited that petitioner's vendor Santana got the said property by way of registered deed of gift being no. 321 for the year 2002 and got possession. In such view of the matter it is palpably clear that since the plaintiff's vendor's deed of gift being no. 321 is under challenge in the said suit, the petitioner herein has direct interest in the outcome of the said suit.

10. Needless to reiterate that 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, whereas a proper party is a person whose presence would enable the court to completely 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. In the present context the petitioner certainly has a direct and substantial interest in the property purchased by him and the outcome of the suit has a direct impact upon his right title interest in the property. If the suit decided against his vendor, it would undoubtedly materially affect the right title and interest in the property purchased by petitioner. Not only that the plaintiff in the suit has also prayed for permanent injunction where the petitioner herein claimed to have in possession of the same. Therefore before granting any injunction with respect to the properties in respect of which the petitioner herein is claiming right, title, interest and possession on the basis of aforesaid sale deed, he ought to have given an opportunity of being heard and perhaps no

injunction could have been granted against him without impleading him as party and without giving him an opportunity of being heard. Even in an execution proceeding arising from a decree, if any, passed in the instant suit, the petitioner may be required to be heard who claimed himself as possessor of the said property.

11. The Supreme Court in the decision of ***Amit Kumar Shaw and another Vs. Farida Khatoon and another*** reported in **(2005) 11 SCC 403** held that sometime a transferor pendente lite may not even defend the title properly as he has no interest in the same or may collude with the plaintiff, in which case the interest of the purchaser pendente lite will be ignored. To avoid such a situation the transferee pendente lite can be added as a party-defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendent lite acquires the interest in the entire estate that forms the subject matter of the dispute.

12. In ***Thomson Press (India) Ltd Vs. Nanak Builders and Investors Pvt. Ltd. And others*** reported in **(2013) 5 SCC 397** referring ***Amit Kumar Shaw (supra)*** has endorsed the same view and the Apex Court held that though the plaintiff is under no obligation to make a lis pendente transferee a party, under Order XXII Rule 10, an alienee pendente lite may be joined as party and the court certainly has discretion in the matter which must be judicially exercised and alienee would ordinarily be joined as a party to enable him to protect his interest. It was further held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that

interest and as such he is entitled to be heard in the matter on the merits of the case.

13. It is also to be mentioned in the present context that the plaintiff is not represented before this Court nor prayer for adding petitioner as party, has been opposed by the plaintiff before this Court. It is also well settled that if a party can show a fair semblance of title or interest, he can certainly make a prayer for his impleadment. Learned court below while passing the order impugned swayed away by the impression that plaintiff has not made the prayer for adding the petitioner as party and that the dispute in the suit can very well be settled without adding petitioner as a party in the said suit.

14. In this context it needs to be mentioned that Order I Rule 10 (2) starts with the words “ *the court may at any stage of the proceeding, either upon or without the application of either party*” which signifies that a court may at any stage of the proceeding either upon or even without any application, direct a person to be added as a party, whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short the court is given discretion to add as a party any person who is found to be a necessary party or proper party. Moreover the expression used in order 1 rule 10(2) “*settle all the questions involved in the suit*” is susceptible to a liberal interpretation so as to adjudicate all the issues pertaining to declaration and injunction.

15. In view of aforesaid discussion I am constrained to interfere with the order impugned. Thus the order no. 39 dated 12th January 2018 passed by

Learned Civil Judge, (Junior Division) Utter Dinajpur in T.S 112 of 2010 is hereby set aside.

16. C.O 3435 of 2019 is allowed. The petitioner herein is impleaded as defendant no. 16 in the said suit. The court below after giving the said petitioner/added defendant an opportunity of filing additional written statement, if any and after framing additional issues if any, will adjudicate the suit finally at the earliest without being influenced by any observation made herein.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)