

Ct. 12.04
No. 2024
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C.O. 1527 of 2020
M/s. Priyagopal Bisoyi Sarees Pvt. Ltd.
-Versus-
Mrityunjoy Ghosh & Ors.

Mr. D. Roy
Mr. K.C. Das

...For the Petitioner

Mr. Malay Kumar Adhikari ...For the Opposite Party No. 1

The order dated 4th December, 2019 passed by the Civil Judge Senior Division, 7th Court, Alipore in T.S. No. 166 of 2015 has been assailed in the present application filed under Article 227 of the Constitution of India.

Being aggrieved by that order petition contended that the petitioner company/complainant herein purchased an immovable property against valuable consideration from some of the defendants, who were the erstwhile owners by a Registered Deed of Conveyance dated 19th September, 2014. Petitioner herein alleged that the plaintiff / opposite party No. 1 herein may had been earlier carrying on a business from a portion of the ground floor of such property on a partnership basis, with some other defendants or under permissive possession with the erstwhile owners in yester years. However, the erstwhile owners made over physical khas possession to the petitioner herein at the time of execution of the aforesaid Registered Deed of Conveyance simultaneously with the acceptance of due consideration thereof. Since then the petitioner herein are enjoying khas vacant possession of the entire premises in question and have

mutated their names in the roles of the Kolkata Municipal Corporation as exclusive owners.

It may be that in between the plaintiff and the original defendants have some dispute and differences with regard to their business which allegedly used to be operated from a portion of the ground floor of the premises now possessed and owned by the petitioner herein. The petitioner herein is not privy to such fiduciary relationship and does not and cannot have any nexus to the same since the petitioner is absolutely in possession of the entire property exclusively. Neither the plaintiff nor any of the parties to this suit have any right, title or interest in respect of the petitioner's entire premises and/of any part thereof.

Mr. D. Roy, learned Counsel appearing on behalf of the petitioner further submits that now possibly with a motive of extortion, the plaintiff sought to implead the petitioning company herein as a party / defendant in the suit in which the petitioning company has no connection to the subject matter whatsoever. He however submits that from the schedule of the plaint itself it would be crystal clear that the subject matter of the suit is limited to erstwhile sweetmeat business between the parties in suit and about share of some articles used in said business and not in connection with any immovable property. The petitioner in

fact has reconstructed the erstwhile dilapidated premises after purchase and therefore the plaintiff is attempting to somehow implead him with a motive of squeezing some unlawful monetary benefits by putting the petitioner's title to the immovable property into some cloud.

He further submits learned Court below by the order impugned allowed the plaintiff's prayer for impleading petitioner as defendant, on the basis of the plaintiff's application filed under Order I, Rule 10(2) of the Code of Civil Procedure, without considering that the unregistered partnership business allegedly being M/s. Nakuleswar Mistannya Bhandar has not been impleaded in the suit with an oblique motive and that the books of accounts of such family business would have clearly revealed that its assets did not have slightest connection with the petitioner's immovable property or any part thereof. Plaintiff in the suit only to add confusion has made statements to the effect that petitioner's purchased immovable property actually belongs to Government. Even if there is any iota of truthfulness in the said allegation, then Government of West Bengal may be impleaded and not the petitioner herein. Petitioning Company is not even a proper party far being a necessary party. Accordingly, he has prayed for setting aside the order impugned.

Mr. Malay Kumar Adhikari, learned Counsel appearing on behalf of the opposite party No. 1 submits that the said Deeds are required to be proved before the Court below. Petitioner Priya Gopal Bisoyi Sarees Pvt. Ltd. is a proper party in the suit and the suit is required to be disposed of in his presence.

I have considered the submissions made on behalf of the parties and also the order impugned. It appears from the plaint that the plaintiff in the suit has prayed for preliminary decree for partition of the property described in the schedule to the plaint and the schedule of the plaint is comprising of one business of the parties to the suit namely, M/s. Nakuleswar Mistannya Bhandar and list of certain schedule of articles might had used for the said family business. It is submitted that said family business no longer exists.

Learned Counsel appearing on behalf of the petitioner strenuously argued that his client has purchased the property with valuable consideration and he has got no connection with the said erstwhile business among the parties or other movable properties mentioned in the schedule to the plaint.

It is now well settled that while considering an application for addition of party under Order I, Rule 10(2) of

the Code of Civil Procedure, the Court is required to consider that two tests are to be satisfied for determining the question who is a necessary party and the tests are :-

- a) there must be a right to some relief against such party in respect of the controversies involved in the proceeding;
- b) No effective decree can be passed in the absence of such party.

Even to call petitioner as a proper party, it is to be shown that the petitioning Company's presence is necessary for complete and effectual adjudication of the dispute, though no relief might have sought for against Company. If a person/company is not found to be proper or necessary party, the Court does not have the jurisdiction to order his impleadment.

While dealing with such application it is also required to be remembered by the Court that it must not permit a mis-joinder of causes of action. If causes of action of different parties are entirely different from each other, they cannot be put in the same category of plaintiff or defendant.

In the present case, from the cryptic order passed by the Court below, I find that the Court below has not discussed as to why the petitioner's presence is required for the purpose of adjudication of the dispute in the suit. Court

below found them as necessary party as defendant Nos. 4 and 5 transferred their share in respect of suit property in favour of petitioning Company, without having any discussion about subject matter of such and/or relief which has been sought for in the plaintiff. There is no discussion in the order impugned as to why no effective decree can be passed in the said partition suit in the absence of petitioning Company.

In such view of the matter, the order impugned is a perverse having not based on principles required to be followed while dealing with such application. Accordingly, the matter the order impugned dated 4th December, 2019 is hereby set aside.

The revisional application, being C.O. 1527 of 2020 is accordingly allowed.

The Court below is directed to hear the application filed by the plaintiff under Order I, Rule 10(2) of the Code of Civil Procedure afresh after giving opportunity to the parties to contest and to pass a reasoned order, preferably within a period of six weeks from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)

