

21.05.2024
Item No.5
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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Appellate Side

CO/80/2024

NARAYAN PRASAD LOHIA
VS
MAYNA GOPE & ANR.

Mr. Debayan Goswami, Adv.,
Mr. Tanmoy Das, Adv.,
Mr. Reshab Kumar, Adv.
Mr. Subham Gupta, Adv.
..for the petitioner.

Ms. Rima Sarkar, Adv.,
Mr. Bikash Singha, Adv.,
. .for opposite party no.1.

Dr. Navin Barik, Adv.,
Ms. Esha Acharya, Adv.,
. . .for opposite party no.2.

This revisional application arises out of an order dated 15th April, 2024 passed by the Civil Judge, Senior Division at Siliguri whereby and whereunder the petitioner's application for addition of party under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (in short CPC) was dismissed.

The petitioner says that a partition suit was filed by the opposite party no.1 against the opposite party no.2 in the year 1997 which was numbered as Partition Suit No.22 of 1997. The petitioner entered into an agreement for sale with the opposite party

no.1 on 28th May, 2001 for purchase of 50% undivided share of the opposite party no.1 in the plot of land measuring 0.40 acres more or less recorded in Khatian no.39, R.S. Plot no.510 in Mouza Mandalguri, J. L. No.107 at Holding no.26 within Ward no. I (Old) of Siliguri Municipality under Police Station Matigara (hereinafter referred to as the said property). The petitioner says that he is a necessary and proper party in the partition suit.

This application is a thoroughly misconceived one and suffers from suppression of material facts. It will appear from the order of a Division Bench of this Court in MAT 1399 of 2014 arising out of WP No. 20618(W) of 2013 filed by the petitioner that the agreement for sale contains an arbitration clause. The petitioner and the opposite party no.1 had referred their dispute to arbitration and an award has been passed. This fact has not been stated either in the petition for addition of party or in the revisional application although the same is material as stating such fact is likely to disentitle the petitioner of any order. The petitioner also does not have any right, title or interest as an agreement holder in respect of the suit property. The petitioner's remedy, if any, is to seek for specific performance of the agreement dated 28th May, 2001.

It is submitted on behalf of the opposite parties that the partition suit inter se between the opposite party no.1 and 2 was initially decreed in preliminary form and the final decree has been passed in 2013. The petitioner has applied for being added as a party only in the year 2023 when the suit had been already decreed.

The factual assertion by the parties does not appear to be correct. In the order impugned it has been clearly recorded that the suit was dismissed for non-prosecution. The plaintiff was found to be unrepresented on successive occasion which led to dismissal of the suit on 9th March, 2017.

In the facts of the case, the petitioner is neither a necessary party in the partition suit as he has not acquired any right, title or interest in the property being the subject matter of the partition suit. The petitioner is also not a proper party as the issues relating to partition are not required to be decided in the presence of the petitioner.

The application, therefore, fails and is accordingly dismissed, however, without any order as to costs, though I was minded to impose cost for suppression of material fact.

(ARINDAM MUKHERJEE, J.)