

OD-2

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/13/2024
WITH CS/221/2013
IA NO: GA/1/2024

MARCO POLO RESTAURANT PVT. LTD.
VS.
AMIT TIWARI & ORS.

BEFORE :

THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PARTHA SARATHI SEN
Date : 24th September, 2024

Appearance :

Mr. Utpal Bose, Sr. Adv.
Mr. Aniruddha Chatterjee, Adv.
Mr. Siddhartha Banerjee, Adv.
Ms. Suchismita Ghosh (Chatterjee), Adv.
Mr. Prasanta Naskar, Adv.
Mr. Abir Lal Chakraborty, Adv.
....for appellant

Mr. Suman Dutt, Adv.
Mr. Satadeep Bhattacharyya, Adv.
Ms. Shreyashee Das, Adv.
Mr. Himanshu Bhowsinghka, Adv.
Mr. Rohan Kumar Thakur, Adv.
...for respondents

The Court : The seminal point involved in the instant appeal is whether the Court in exercise of power under Order 22 Rule 10, read with Order 1 Rule 10(2) of the Code of Civil Procedure can substitute the parties by deleting the name of the original plaintiffs. The application was taken out by the added plaintiffs seeking their addition on the strength of the transfer/transmission/devolution of interest in respect of a property on the

dissolution of the trust. The application would reveal that the proposed added plaintiffs were some of the beneficiaries under the trust and after a conscious decision having taken to dissolve the trust, some of the beneficiaries relinquished their rights in such capacities in favour of the proposed added plaintiffs. The Single Bench allowed the application granting the reliefs in terms of the Master's Summons which, according to the appellant, would bring inconsistency and would be contrary to the settled proposition of law. Though the argument is advanced taking aid of the aforesaid provisions that the Court should not delete the name of the original plaintiffs but we find from the tenet of the application that in fact the proposed added plaintiffs sought to derive their right, title and interest in the property on the basis of the acts and/or things done at the behest of the trustees. Whether the trustees were competent enough to dissolve the trust and create devolution of the interest into the proposed plaintiffs are questions to be decided in the suit on the basis of the evidence to be adduced in this regard. The Court found that the proposed added plaintiffs have acquired the right, title and interest in respect of a subject property on the basis of the acts and deeds done at the behest of the original plaintiffs and substituted them upon deleting the names of the original plaintiffs from the cause title of the plaint. Since the question is raised on the derivative title of the proposed plaintiffs, the proper course which should have been adopted is to add the proposed plaintiffs as the co-plaintiffs in the suit and the leave be granted to proceed with the same.

We are unable to comprehend the stand of the appellant that in the garb of an addition the name of the original plaintiff cannot be struck off as Order 1 Rule 10(2) of the Code of Civil Procedure confers power upon the Court not only

to add a party to the proceedings but to strike out the name of any party. Since we have decided that there is no infirmity in adding the proposed added plaintiffs along with the original plaintiffs, the order impugned is modified to the extent that in the event of adding the plaintiffs as co-plaintiffs, the original plaintiffs shall remain on record and the names shall not be deleted from the category of the plaintiffs.

Such amendments have to be made by the plaintiffs in terms of Order 6 Rule 18 within 15 days from the date of reopening of this Court following the Puja Vacation and the copy of the amended plaint shall be served upon the appellants.

Since the suit has progressed substantially, we expect that the same should be brought to its logical end at the earliest and we request the learned Judge in the Trial Court to expedite the hearing of the said suit.

To bring more clarity or eradicate any confusion that may arise from the observations made hereinabove, we make it clear that all points available to the parties are kept open and if taken, shall be decided in accordance with law.

The appeal and the application are, accordingly, disposed of.

(HARISH TANDON, J.)

(PARTHA SARATHI SEN, J.)