

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

***C.O. 282 of 2023
Panchanan Mandal & Ors.***

VERSUS

Sonali Sultana & Ors.

For the petitioner:

Mr. Partha Pratim Roy, Adv.
Mr. Kanak Kiran Bandyopadhyay, Adv.
Mr. Shuvanil Chakraborty, Adv.

for the opposite party nos. 6-10

Mr. Rwitendra Banerjee, Adv.
Mr. Shibasis Chatterjee, Adv.
Mr. Sandip Kundu, Adv.

Last Heard on: March 21, 2025

Judgment on: March 27, 2025

Biswaroop Chowdhury,J:

1. The petitioner before this Court is a plaintiff in a suit for declaration and permanent injunction and is aggrieved by the Order dated 22-03-2022 passed by Learned Civil Judge (Junior Division) 1st Court at Jangipur in Title Suit No-114 of 2011. The petitioner/plaintiff being aggrieved by the Order passed by the Learned Court in allowing the

application of opposite parties no-6 to 10 for addition of parties has come up with this application under Article 227 of the Constitution of India.

2. The case of the opposite parties no-6 to 10 in the application for addition of parties may be summed up thus.

It is contended by the opposite parties no-6 to 10/applicants that by sale Deed dated 1-06-1960 Smt Sarala Bala Devi transferred the suit property to one Santi Lal Jain which was a registered deed being No-5139/1960 dated 1-06-1960. Santi Lal Jain subsequently sold the said property to one Subhash Chandra Singha Ray Digar on 2-08-1960. Vide Deed No. 6501/1960. The said Subhas Chandra Singha Ray Digar by virtue of Deed No-7976/1968 dated 03-09-1968 sold a portion of the said property to one Jyotsna Bibi on 06.09.1968. Vide Deed No-8000/1960 and sold the remaining portion to M.D. Afan Sheikh by virtue of another Deed of Conveyance dated 06.09.2008 vide Deed No. 8001/1960. Later by virtue of another Deed being Deed No-7349/1979 said Kasad Ali Sheikh sold his share to Kalu Sheikh the father of the Applicants/opposite parties 6 to 10 on 3-08-1979. Subsequently the father of the opposite party no-6 to 10/applicants executed a Heba-bil Ewaz in favour of the opposite party No. 10, on 17/08/1998 vide Deed No. 1463/1998. The applicants contended that they were all along in possession of the suit property and the plaintiffs and the Original Defendants have no right title interest over the suit property.

3. The petitioners/Plaintiffs and the original defendants filed objection to the petition for addition of parties.
4. By Order dated 22/03/2022 Learned Trial Court was pleased to dispose the application for addition of parties by observing and directing as follows:

Today is fixed for passing order over the petition filed by the applicant side desiring impleadment in this suit. Heard the plaintiff side, the defendant side and the applicant side and considered the relevant documents.

The plaintiff side asserts its stake over the suit property vide its purchase deed of 2006 while the present defendant are staking their claim over the suit property vide the purchase deed of 1959. The instant applicants are staking their claim over the suit property on the strength of their purchase deed of 1960. In this regard, the plaintiff side objection on the impleadment of the applicant is that it is causing no disturbance to his peaceful possession. Be that as it may, this non-disturbance may amount to any no injunction prayer against the applicants. But when the question comes to deciding the title over the suit property, then though neither of the defendant nor the applicants shall get any positive right in this suit but at the most can frustrate the plaintiffs case. The document of the applicant side and its stake from the year 1960 is highly relevant in context of the plaintiff side's stake since 2006. Thus, after considering all the legal possibilities and for the ends of justice, hence it is

ORDERED

That the applicant be impleaded as a party in this suit as a defendant. The rival claim of the present applicant is sufficient cause for the plaintiff to implead them as the plaintiff have also to steer clear of this cloud of doubt over their property by the applicant side.

Petition is thus allowed and disposed of.

To **26/04/2022** for filing amended plaint with proper cause title.’

5. The petitioners/plaintiffs being aggrieved by the Order dated 22/03/2022 passed by the Learned Trial Court has come up with this application under Article 227 of the Constitution of India.
6. It is the contention of the Petitioners/plaintiffs that the Learned Judge acted illegally and with material irregularity in exercise of his jurisdiction in as much as the Learned Judge failed to appreciate that the petitioners as plaintiffs have instituted the suit against the Defendants ie. the opposite party nos 1 to 5 and the opposite parties no-6 to 10 are nowhere related to those deeds under challenge. It is further contended that the Learned Trial Court acted illegally and with material irregularity as the Learned Court failed to appreciate that the petitioners are in possession of the suit property and have obtained injunction restraining the defendants/opposite parties no-1 to 5 from disturbing possession of the petitioners and the opposite parties no. 6 to 10 are not in possession of the suit property. It is also contended that the Learned Court acted illegally and with material

irregularity in the exercise of its jurisdiction as the Learned Judge failed to appreciate that the original erstwhile owner of the suit property namely Smt Sarala Bala Debi died intestate way back in the year 1957 and the basis of the claim of the Added Defendants/opposite parties in the suit arises from a fictitious Deed of Conveyance which has been executed allegedly by said Sarala Bala in the year 1960 ie after three years of the death of Sarala Bala Debi which is impossible.

7. Pursuant to the filing of this application notice was issued upon the opposite parties no. 6 to 10, who were the applicants for addition of party before Learned Trial Court. Notice upon opposite parties no-1 to 5 is however dispensed with. Opposite parties no. 6 to 10 appeared and contested the case.
8. Heard Learned Advocate for the Petitioner and Learned Advocate for the opposite Parties no-6 to 10. Perused the petition filed and materials on record.
9. Learned Advocate for the Petitioner submits that the Learned Trial Judge erred in adding opposite parties no. 6 to 10 as defendants when no relief was claimed against the said opposite parties/applicants. Learned Advocate further submits that the plaintiff has discretion against whom to proceed and thus cannot be compelled to make those persons against whom relief is not sought. Learned Advocate also submits that in the event the applicants seeks

to obtain declaration about their right they could have filed a separate suit.

10. Learned Advocate for the petitioner relies upon the following Judicial decisions.

Gurmit Singh Bhatea. VS Kiran Kant Rabinson.

Reported in (2020) 13 SCC-733.

Ashyanu Construction VS Md Omar and Anr.

Reported in 2013 2 CAL LJ. P-400

Asit Roy VS Sumita Dutta.

Reported in 2011 o Supreme (Cal) 883.

Kasturi VS Ayyamperumal and ors.

Reported in (2005) (3) Supreme 574.

11. Learned Advocate for the opposite Party no-6 to 10 submits that the Learned Trial Judge did not commit any error in impleading his clients as parties. Learned Advocate further submits that the opposite parties are in possession of the suit properties and on the basis of sale deed executed by Sarala Bala Debi in the year 1960 the opposite party no-6 to 10 have right in suit property. Learned Advocate submits that the impleading of opposite parties no-6 to 10 is

necessary for proper adjudication of the suit. Learned Advocate for the opposite party no-6 to 10 relies upon the following Judicial decisions.

Ramesh Hirachand Kundanmal VS Municipal Corporation of Greater Bombay and others.

Reported in (1992) 2 SCC. P 524.

Razia Begum VS Sahebradi Anwar Begam and others.

Reported in AIR-1958 S.C.886.

12. Before proceeding to deal with the issue it is necessary to discuss the provisions contained in Order 1 Rule 10(2) of the Code of Civil Procedure and the Judicial decisions on that issue.
13. Order 1 Rule 10(2) of the Code of Civil Procedure provides as follows:

Order 1 Rule 10(2) 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 effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

14. In the case of Gurmit Singh Bhatia (supra) the Hon'ble Supreme Court observed as follows:

“5.2 An identical question came to be considered before this Court in the case of Kasturi (supra) and applying the principle that the plaintiff is the dominus litis, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question who is a necessary party. The tests are – (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. It is further observed and held that in a suit for specific performance the first test can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is

impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character. In paragraphs 15 and 16, this Court observed and held as under:

“15. As discussed hereinafter, whether Respondents 1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of Respondents 1 and 4 to 11 before the court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed.

Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of *Vijay Pratap v. Sambhu Saran Sinha* [(1996) 10 SCC 53] this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since Respondents 1 and 4 to 11 were not parties in the

suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

16. That apart, from a plain reading of the expression used in subrule (2) Order 1 Rule 10 CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally

outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.” That thereafter, after observing and holding as above, this Court further observed that in view of the principle that the plaintiff who has filed a suit for specific performance of the contract to sell is the *dominus litis*, he cannot be forced to add parties against whom, he does not want to fight unless it is a compulsion of the rule of law. In the aforesaid decision in the case of Kasturi (supra), it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and therefore, the same can be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract. It is further observed and held

that in a suit for specific performance of the contract to sell the lis between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is also not open to the Court to decide whether any other parties have acquired any title and possession of the contracted property. It is further observed and held by this Court in the aforesaid decision that if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third parties as party defendants in such suit. The aforesaid observations are made by this Court considering the principle that plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law. Therefore, considering the decision of this Court in the case of Kasturi (supra), the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract between the original plaintiffs and original defendant no.1 and in a suit for specific performance of the contract to which the appellant is not a party and that too against the wish of the plaintiffs. The plaintiffs cannot be forced to add party against whom he does not want to fight. If he does so, in that case, it will be at the risk of the plaintiffs.”

15. In the case of Ashyana Construction (supra) this Court observed as follows:

“A person cannot be impleaded merely because he would be incidentally affected by the judgement, or is interested in the fruits of the litigation, or his presence may enable the court to come to a correct solution of the dispute before the court. What is to be seen in allowing or disallowing an application for addition of a party is whether such addition would be consistent with the scope of the inquiry necessitated in the pending suit and in the absence of such party it would not be possible to completely and effectively adjudicate the controversy raised before the court. The main object of the rule is not to prevent multiplicity of actions or avoid fresh litigation, but to consider whether the person is directly or legally in the action.”

16. In the case of Asit Ray (supra) this Court observed as follows:

‘5. MR. Dutta Learned Advocate for the opposite party submits that the prayer for addition of the parties should be granted with a view to avoiding multiplicity of suits. In support of his contention MR. Dutta has referred to the decision of Razia Begum V Sahebradi Anwar Begum and ors. reported in AIR 1958 S.C. 886. He has also referred to the decision of Anil Kumar Show and anr V Farida Khatoon and anr reported in AIR 2005 S.C. 2209 and thus he submits that the Learned Trial Judge has rightly allowed the application for addition of parties. With due respect to MR. Dutta, I am of the view that neither of the decisions is applicable in the instant case. The first case laid down that a

person may be added as a party if he has a direct interest in the property in suit. I have stated above that the plaintiff has not stated the status of the intending parties with regard to the suit property. Though they are the sisters of the plaintiff except the Promoters. So far the promoters are concerned at present I do not find any materials in support of their contention to treat them as promoters. The other decision relates to a fact that the transferee pendent lite can be added as a proper party. If his interest in the subject matter of the suit is substantial and not just peripheral this is not the situation at all in the instant case.'

17. In the case of Kasturi (supra) the Hon'ble Supreme Court observed as follows:

'10. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged

and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker Vs. Small* 1834 (40) English Report 848 made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

18. In the case of *Razia Begum* (supra) the Hon'ble Supreme Court observes as follows:

"Under Order 1 Rule 10, of the Code of Civil Procedure the court has the power to pass orders regarding the adding of parties or striking off the name of

a party. Whether the exercise of this power is a matter of jurisdiction or of discretion appears to have been the subject of difference of opinion in the courts of law here and in England. Whichever view may be correct it is, patent that resort to the exercise of such power could only be had if the court is satisfied that it is necessary to make an order under O. 1, r. 10, in order to effectually and completely adjudicate upon and settle all questions involved in the suit. The court ought not to compel a plaintiff to add a party to the suit where on the face of the plaint the plaintiff has no cause of action against him. If a party is added by the court without whose-presence all questions involved in the suit could be effectually and completely adjudicated upon, then the exercise of the power is improper and even if it be a matter of discretion such an order should not be allowed to stand when that order is questioned in a superior court. The plaintiff is entitled to choose as defendants against whom he has a cause of action and he should not be burdened with the task of meeting a party against whom he has no cause of action. It was, however, suggested that on the face of the plaint not only respondent 3 was interested in denying his marriage with the appellant but a legitimate inference could be drawn from the contents of the pleadings that respondents 1 and 2 were also interested in denying the marriage. No allegation made in the pleadings even remotely suggests that respondents 1 and 2 were interested to deny the alleged marriage of the appellant to respondent 3 or were denying the same. Under s. 42 of the Specific Relief Act a suit may be instituted against any person denying or interested to deny the plaintiffs legal character or right to

any property. The plaint does not suggest that respondents 1 and 2 were denying the appellant's status as wife of respondent 3. Such an issue was raised by the appellant against respondent 3 only. In law, it cannot be said that respondents 1 and 2 are interested to deny the status of the appellant as the wife of respondent 3 because the status of respondent 1 as wife and respondent 2 as the son of respondent 3 is not in the least affected even if the appellant is declared to be the wife of respondent 3, as under the Mohammedan law respondent 3 is entitled to have both the appellant and respondent 1 as his wives and .children through them. The true legal position in the present suit between the appellant and respondent 3 is that respondents 1 and 2 have no locus standi in such a suit. There is no danger of multiplicity of suits during the lifetime of respondent 3. The suggestion that the present suit would lead to multiplicity of suits is founded on an assumption which no court of law can assume. It cannot be assumed that respondent 3 would die first. It may well be that he may survive both respondents 1 and 2, in which case, no question of any suit coming into existence at their instance would arise. If the order allowing respondents 1 and 2 to be added as parties in a suit of the present nature is allowed to stand it will open the way to a wider exercise of powers under O. 1, r. 10, and in a manner which was not contemplated by the Code of Civil Procedure, or s. 42 of the Specific Relief Act or permissible under the Mohammedan law.”

19. In the case of Ramesh Hirachand Kundanmal (supra) the Hon'ble Supreme Court observed as follows:

“13. A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

14. 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 objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the 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 questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is 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 effectually and completely settled unless he is a party. The line has been drawn on 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. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to

prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.*, (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A v. Bank of England*, (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:-

"The test is `May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights.'"

20. Upon considering the provisions contained in Order 1 Rule 10(2) of the Code of Civil Procedure and the judicial decisions relied upon it is clear that before impleading a party to a suit the Court must consider and arrive at a finding as to whether the person sought to be impleaded is a necessary or a proper party.

21. Now the guiding principles to be applied with regard to consideration of necessary and proper party varies with regard to the nature of suits. The principles with regard to impleading of a party in a suit for specific performance of a contract may not be the same with regard to suit for declaration, permanent injunction or partition of an immoveable property.

22. It is well settled by different Judicial pronouncements that 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.

23. The decisions relied upon by the Learned Advocate for the petitioner mostly involves suit for specific performance of contract and the instant suit is for declaration and permanent injunction with regard to an immovable property. Although the case of Asit Ray and Ashyana Construction relied upon does not relate to specific performance of contract but disputes are not similar to the instant suit. In the case of Ashyana Construction the applicant prayed for addition of party in an application under Order 21 Rule 99 read with Rule 101 of the Code of Civil Procedure Order XXI Rule 99 of the Code of Civil Procedure is applicable where any person other than the judgment debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree by the purchaser thereof he may make an application to the Court complaining of such dispossession Sub-Rule-2 further provides that where any such application is made the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

24. Thus Rule 99 limits the scope with regard to making complaint in case of dispossession, and the finding of the Learned Trial Judge was

that the applicant has not been dispossessed from the suit premises.

Thus application for addition of party was refused.

25. In the case of Asit Roy relied upon by the petitioner it was the plaintiff's prayer for addition of party which was refused on the ground that the plaintiffs have not stated cause of action against the left out parties proposed to be added or with regard to their right title or interest in suit property. It was also not stated as to how developer is interested in suit property. It was not an application by persons intending to be added as parties having interest in suit property. Thus the said decision is not applicable to the facts of the case.

26. Some observations in the case of Ramesh Hiraihai Kundanmal by the Hon'ble Supreme Court is once again reiterated as follows:

'10 The power of the Court to add parties under Order 1 Rule 10 CPC came up for consideration before this Court in Razia Begum. In that case it was pointed out that the courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit he should have a direct interest in the subject matter of the litigation whether it be the questions relating to moveable or moveable property.

In the case of Razia Begum VS Sahebzadi Anwar Begum and ors, reported in AIR-1958. S. C. 886 the Hon'ble Supreme Court observed as follows:

14. 'As a result of these considerations, we have arrived at the following conclusions:-

(1) That the question of addition of parties under Rule. 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view. of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contra distinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in s. 115 of the Code;

(2) That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation;

(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy ;

(4)The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of ss. 42 and 43 of the Specific Relief Act ;

(5)In cases covered by those statutory provisions the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;

(6)The result of a declaratory decree on the question of status such as in controversy in the instant case affects not only the parties actually before the court but generations to come, and, in view of that consideration, the rule of 'I present interest' as evolved by case law relating to disputes about property does not apply with full force; and

(7)The rule laid down in s. 43 of the Specific Relief Act is not exactly a rule of res judicata. It is narrower in one sense and wider in another.'

27. Now if it is the position of law that a person who have a direct interest in the suit property or direct interest in the subject matter of the litigation are proper parties it can be inferred that the opposite parties no. 6 to 10 who claim to be owners of the suit property have a direct interest in the subject matter of litigation. As plaintiffs have challenged the right of the defendants to the suit property and have sought relief against the defendants/opposite party no. 1 to 5 it is true that the reliefs can be granted without impleadings the applicants/opposite parties no. 6 to 10 but for proper

and effective adjudication of suit the opposite party no. 6 to 10 should be added as a party as opposite party no-6 to 10 have also claimed ownership of suit property relying on a sale deed. It is to be remembered that right to property although is not a fundamental right but it is a constitutional right, thus any citizen having right to any property is entitled to use and enjoy the property without any undue hindrance. In the event there is any hindrance to the enjoyment of right to property or challenge is thrown to the ownership of property the person whose right to property is unduly obstructed or challenged may move the competent court of law to enforce or defend such right as the case may be.

28. Similarly when a person comes to know that the immovable property which he is enjoying as an owner is the subject matter of a dispute in Court between two other persons, the person who was in peaceful possession and enjoyment of such immovable cannot use the property with peace as anxiety will creep into his mind making him disturbed. As right to life under Article 21 of the Constitution includes right to live in peace a person whose peace is disturbed on the ground of his property specially immoveable property being subject matter of dispute in any litigation has a right to knock the doors of Court and pray for addition of party giving particulars as to how he acquired the property. Such addition will not only remove the anxiety but also aid in proper and effective adjudication of the suit and resolve of the dispute. Moreover when an immoveable property is subject matter of dispute in a litigation Government Authorities ordinarily keeps the application for mutation

pending till the dispute is resolved and, Banks and Financial institution ordinarily do not sanction loan against mortgage of the said property or loan for development of the said property whoever be the parties in the litigation. Thus a bona fide occupier of immoveable property having documents with regard to title would reasonably ascertain the subject matter of dispute with regard to the said property and make application for addition of parties.

29. In the facts and circumstances discussed above this Court is of the view that the Learned Trial Court rightly allowed the application for addition of parties. Thus this application fails and the same should be dismissed.

30. Hence this Revisional Application is dismissed. Order dated 22-03-2022 passed by Learned Civil Judge (Junior Division) 1st Court at Jangipur District Murshidabad in Title Suit No.114 of 2011 is affirmed. It is however made clear that this Court has not gone into the merits of the rights of either parties including added parties in the suit property. Thus all points are kept open to be decided by the Learned Trial Court. As the suit is pending for about 14 years Learned Trial Court is requested to dispose the suit very expeditiously without granting unnecessary adjournments.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury,J)

