

C.O. 581 of 2025

Mrs. Sudeshna Basu & Anr.
-versus-
Mr. Rahul Basu & Anr.

Mr. Anindya Basu.
Mr. Debdut Mukherjee.
Mr. Amit Kumar Saha.
... For the petitioners.

Mr. Nirmalya Dasgupta.
Mr. R. L. Mitra.
Ms. Priyanka Dhar.
...For the opposite party no. 2.

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order dated November 21, 2024 passed by the learned Civil Judge (Junior Division), 1st Court, Alipore in Title Suit No. 295 of 2024.

By the order impugned the application under Order I Rule 10 of the Code of Civil Procedure filed by the opposite party no. 2 herein was allowed.

The learned counsel appearing for the petitioners submits that the applicant under Order I Rule 10 of the Code of Civil Procedure is neither a necessary party nor a proper party as he had transferred his interest in respect of the suit property in favour of the opposite party no. 1 herein.

Per contra, the learned advocate appearing on behalf of the opposite party no. 2 draws the

attention of the Court to various paragraphs of the plaint more particularly paragraphs 5 and 8 of the plaint in support of his contention that the petitioners have claimed to be a tenant under the opposite party no. 2 herein. He submits that the opposite parties did not induct the petitioners as tenant in respect of any question of the suit property. He further submits that the dispute involved in the instant suit revolves around the family members and for such reason the learned judge rightly allowed the application for addition of party.

Heard the learned advocates for the parties and perused the materials placed. The petitioners as plaintiffs filed a suit praying for declaration of tenancy right and for permanent injunction restraining the opposite party no. 1 herein his wife and men and agents from dispossessing them and/or disturbing their peaceful possession in respect of the suit premises.

After going through the plaint, this Court finds that it has been stated in paragraph 10 thereof that the plaintiff has come to know that by a deed of gift the father of the plaintiff no. 2 and the defendant no. 1 that is the opposite party no. 2 herein had transferred the suit property in favour of the opposite party no. 1 and by virtue of the said deed of gift the defendant no. 1/opposite party no.1 has become the absolute owner of the suit premises.

In the application under Order I Rule 10 of the CPC the opposite party herein have also stated that the defendant no. 1 is the absolute owner of the entire first floor, second floor and the roof with boundary on the third floor as well as the garrage on the ground floor of the building and placed

reliance on two registered deeds of gifts dated 4th April, 2023 and 24th May, 2023 in that regard.

It appears that the suit was filed after execution of the deed of gift by the opposite party no. 1 herein.

It is well settled that the plaintiffs being the *dominus litus* has the right to choose the persons against whom he wants to proceed against.

After going through the scope of the instant suit, this Court is of the considered view that the opposite party no. 2 is neither a necessary party nor the presence of the opposite party no. 2 is necessary for the purpose of effective adjudication of the dispute between the parties. Merely because of the fact that the opposite party no. 2 and the parties who were originally impleaded in the Title Suit are family members, that can be the ground for allowing an application for addition of party.

The learned Trial Judge, in the considered view of this Court, applied the wrong legal tests while deciding an application under Order I Rule 10 of the CPC. For such reason, this Court is inclined to interfere with the impugned order.

Accordingly, the order dated 21st November, 2024 passed by the learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas in Title Suit No. 295 of 2024 is set aside.

The opposite party no. 2 is expunged from the array of parties in the suit.

The learned Trial Judge is requested to proceed with the suit accordingly.

After this order was dictated, the learned advocate for the opposite party prayed for a direction upon the learned trial judge to dispose of the suit expeditiously. After taking note of the nature of the suit, learned Civil Judge (Junior

Division), 1st Court, Alipore is requested to dispose of the Title Suit No. 295 of 2024 as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

With the above observations and directions, C.O. 581 of 2025 stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)