

Item-46. 19-03-2025

CO 645 of 2024
CAN 1 of 2025 (not in file)

sg Ct. 236

Tulsi Charan Adhikary & Ors.
Versus
Shibani Saha & Anr.

Mr. Younush Mondal

...for the petitioners

Mr. Satyan Mukherjee

Mr. Sayani Ahmed

Mr. Purnendu Shekhar Ghosh

...for the opposite party no.1

1. The learned Advocate for the petitioners and the learned Advocate for the opposite party no.1 are present. Heard the learned Advocates for the parties.
2. This revisional application is directed against the order dated 02-02-2024 passed by the learned Civil Judge (Senior Division), 1st Court at Barasat, North 24 Parganas, in T.S. No. 271 of 2019 in rejecting the prayers of the petitioners made under Order XXII Rule 10 read with Order I Rule 10 of the Code of Civil Procedure.
3. The learned Judge while rejecting such prayer was pleased to observe and direct as follows:

“That the instant suit has been filed by the plaintiff against the defendant company on the basis of an agreement dated 26.05.2016. That the present applicants are not the parties to the agreement. But according to their contention they were the original owner of the suit property which is mentioned in the agreement and they sold the same to the defendant company in the year 2011. But subsequently they repurchased the same from the defendant company in the year 2017, so it appears after agreement of sale the present petitioners purchased the same from the defendant company. So I do not find any reason to make them parties as defendants in the instant suit. Hence this petition is

devoid of merit and rejected.”

4. It is the contention of the petitioners that the learned Judge failed to consider that the petitioners are the real owners and they are in possession of the land and the opposite party no.2 has no power to enter into the specific agreement. As such, this is a case the petitioners ought to have been made as parties.

5. The learned Advocate for the petitioners draws attention to the annexures P-1 and P-2 of this application showing the suit property and the respective rights of the petitioners.

6. The learned Advocate for the opposite party no.1 objects to the prayer of the petitioners.

7. In order to decide the validity of the order passed by the learned Trial Court, it is necessary to consider a relevant provision contained in Order I Rule 10(2) of the Code of Civil Procedure and those contained in Order XXII Rule 10 of the Code of Civil Procedure. Order I Rule 10(2) of the Code of Civil Procedure provides as follows:

“(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.”

8. Order XXII Rule 10 of the Code of Civil Procedure provides as follows:

“10. Procedure in case of assignment before final order in suit.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).”

9. It is to be remembered that the Court has the obligation to add necessary party without whom the suit cannot be adjudicated and no decision can be arrived at.

10. Upon considering the facts of the case and the materials on record and the nature of interest of the present petitioners in the suit property, this Court is of the view that the petitioners ought to have been added as party in the instant suit. Thus, the order passed by the learned Trial Judge cannot be sustained and the same should be set aside.

11. Hence, this revisional stands allowed. The order dated 02-02-2019 passed by the learned Civil Judge (Senior Division), 1st Court at Barasat, North 24 Parganas, in T.S. No. 271 of 2019, is set aside.

12. The petitioners namely, Tulsi Charan Adhikary, Dilip Kumar Adhikary, Tapati Adhikary and Rina Adhikari be added as party defendants in the said suit.

13. It is hereby made clear that this Court has not gone into the merits of the case. All points are left open to be adjudicated before the learned Trial Court.

14. The learned Trial Court is requested to dispose of the suit expeditiously.

15. In view thereof, CO 645 of 2024 and CAN 1 of 2025 are, accordingly, disposed of.

16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Biswaroop Chowdhury, J.)