

March 12, 2025
Sl. No.12
Court No.6
s.biswas

CO 871 of 2025

Smt. Rekha Kundu
vs.
Arun Kumar Kundu

Mr. Jagannath Ganguly

... for the petitioner

Mr. Arindam Maitra

... for the opposite party

Affidavit of service filed by the petitioner is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against part of the order dated February 20, 2025 passed by the learned Civil Judge (Junior Division), 1st Court, Sealdah in Title Suit No.94 of 2024, whereby the application filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure stood rejected.

The petitioner herein filed a suit against her husband praying for a declaration that she has a right to stay and enjoy the B Schedule property peacefully without any interference of anybody as her shared household. A further declaration that the plaintiff being the wife of the defendant has every right to enjoy the four corners of the property of her husband as described in Schedule B without any interference of any third party was prayed for. A decree for permanent injunction restraining the defendant husband from creating any third party

interest without preserving right of the petitioner in a share household was also prayed for.

After going through the averments made in the plaint together with the reliefs claimed, this court finds that the petitioner has claimed her right of residence in the property owned by her husband as a shared household. Such being the scope of the suit, the petitioner herein filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure praying for adding her daughter, namely, Indrani Dutta as a party defendant in the said suit on the ground that the husband/opposite party herein in the written statement has disclosed for the first time that the part of the Schedule B property has been transferred by the husband/opposite party herein in favour of said Indrani Dutta.

The petitioner being the plaintiff is *dominus litis* and has a right to choose against whom she shall proceed against. It is also well settled that by way of application for addition of party, the scope of the suit cannot be enlarged.

After going through the application for addition of party, this court is of the considered view that the petitioner herein seeks to challenge the right of said Indrani Dutta as an owner and seeks protection of her right of residence in the property which has been transferred in favour of said Indrani Dutta by her

husband. Thus, the scope of the suit which is a suit between the wife and the husband claiming the right of residence in a property of the husband as shared household is sought to be enlarged by way of addition of party.

As observed hereinabove, the scope of the suit cannot be allowed to be enlarged by way of addition of party.

For such reason, this court is not inclined to interfere with the order passed by the learned trial judge rejecting the application for adding Indrani Dutta as a party defendant in the said suit.

After this order is dictated, the learned advocate appearing for the petitioner submits that liberty be given to the petitioner to institute a separate suit against said Indrani Dutta.

If the petitioner is entitled to proceed against said Indrani Dutta, as per law, no liberty is necessary from this court.

CO 871 of 2025 stands disposed of accordingly.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)