

21.01.2025
Item No.
AD 1
Saswata

C.O. 1024 of 2024

**Safalya Pal & Ors.
versus
Nibedita Pal & Ors.**

Mr. S.N.Biswas

...For the petitioners

Mr. Subrata Ghosh

Mr. Pratyush Ghosh

...For the opposite parties

1. Leave is granted to the learned advocate appearing for the petitioners to correct the cause title of the revisional application.
2. Challenging the order dated 22nd November 2023 passed by the Learned Civil Judge (Senior Division), Tehatta, Nadia in Title Suit no. 86 of 2021 rejecting the application of the petitioners under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code") to add them as parties in the partition suit on the strength of their claim that they are Class II legal heirs of Naryan Chandra Pal, the instant revisional application has been filed.
3. Mr. Biswas learned advocate appearing in support of the aforesaid revisional application by drawing attention of this Court to the copy of the plaint in a previous suit which was registered as T.S.39 of 2020 between the parties submits that the plaintiffs/opposite parties had made petitioners as defendants is the suit which was a suit for partition. Incidentally, the plaintiffs did not proceed with such suit and had allowed the same to be dismissed for default. Factum of the dismissal of T.S. 39 of 2020 (in short the previous suit), would corroborate from the order no. 15 dated 11th April 2022 passed by the

Learned Civil Judge (Senior Division), Tehatta, Nadia. He submits that during pendency of the previous suit, the instant suit for partition has been filed with an ulterior motive, by excluding the petitioners from the array of defendants, notwithstanding, the petitioners are necessary parties to the suit.

4. He submits that the plaint case in this suit proceeds on the premise that one Narayan Chandra Pal was the absolute owner of the suit property and the suit property was recorded in his name. The said Narayan Chandra Pal died as a bachelor on 20th May 2004, at the time of death, he did not leave behind any Class I legal heirs as provided in the Schedule of Hindu Succession Act, 1956 (hereinafter referred to as the “said Act”). The plaintiff is the daughter of late kamala Rani Pal, the deceased sister of the aforesaid Narayan Chandra Pal, while the defendant nos. 1 to 4 are the legal heirs of late Monindra Nath Pal, who was one of the brothers of late Narayan Chandra Pal. It is submitted that the petitioners stand on the same footing as that of the parties to the suit. It is in the factual backdrop as aforesaid, the petitioners had filed an application under Order I Rule 10(2) of the Code, inter alia, praying for addition of party in the suit.
5. It is submitted that the Learned Judge, by overlooking the fact that the petitioners are the sons of the pre-deceased brother of late Narayan Chandra Pal and stand on the same footing as the parties to the suit, had rejected such application. He submits that the Class II of the schedule of the said Act does not differentiate between the pre-deceased brother’s son and the deceased brother’s son/daughter and having regard thereto since the petitioners stand on the same

footing as that of the parties to the suit, the petitioners should be permitted to be added as party. According to him, the aforesaid order of the Learned Judge is perverse and should be set aside.

6. Mr. Ghosh, learned advocate enters appearance on behalf of the opposite parties through his junior Mr. Pratyush Ghosh and submits that there is no irregularity in the order passed by the Learned Judge. Admittedly, the petitioners do not come under the purview of entry no. II of Class II heirs to get precedence or to be treated at par with the parties to the suit. He submits that the petitioners are the sons of late Krishna Gopal Pal, the brother of Narayan Chandra Pal who pre-deceased Narayan Chandra Pal and having regard thereto, the petitioners do not have any semblance of interest in the property.
7. Having heard the learned advocates appearing for the parties and having considered the materials on record, I find that admittedly the petitioner nos. 1 to 4 are the sons of late Krishna Gopal Pal who pre deceased Narayan Chandra Pal. I find that although the petitioners claim to be Class II heirs, by reasons of the provisions contained in Sections 8 and 9 of the said Act, there being no Class I heirs, the right of inheritance in terms of the order of succession provided for in the said Act, devolves on the relatives, specified in Class II of the Schedule. However, having regard to the order of succession provided in Section 9 of the said Act, it is crystal clear that among the heirs specified in Class II of the Schedule, those in the first entry in Class II of the Schedule shall be preferred to those in the second entry and those in the second

entry shall be preferred to those in the third entry and so on in succession.

8. Admittedly, on the basis of the submissions made by the parties and on the basis of materials on record and as acknowledged by Mr. Biswas, learned advocate appearing for the petitioners, I find that Narayan Chandra Pal died on 20th May 2004 whereas Krishna Gopal Pal, the father of the petitioner nos. 1 to 4 pre-deceased Narayan Chandra Pal and had died in the year 1985. Though, Krishna Gopal Pal was the brother of Narayan Chandra Pal, by reasons of the said Krishna Gopal Pal having died prior to Narayan Chandra Pal and the succession in the property having opened on the death of Narayan Chandra Pal on 20th May 2004, in my view the parties to the suit who fall under entry no. II being the legal heirs of the brothers and sisters of Narayan Chandra Pal are to be preferred over the petitioners who fall in entry no. IV of such Schedule, since on the date of death of Narayan Chandra Pal, the predecessor in interest of the parties to the suit being the brothers and sisters of Narayan Chandra Pal were alive.
9. I find that the Learned Judge by his order dated 22nd November 2023 has categorically noted down the facts of the case and has come to the finding that the petitioners as the legal heirs of Krishna Gopal Pal by reason of the said Krishna Gopal Pal pre-deceasing Narayan Chandra Pal, did not acquire any interest in the property by way of intestate succession. The petitioners having not been able to demonstrate any other document and/or any testamentary document in support of their claim to have acquired any interest in the suit property and the Learned Court having found

it fit had rejected the application filed under Order 1 Rule 10(2) of the Code. I find no illegality in the order passed by the Learned Civil Judge (Senior Division), Tehatta, Nadia. The petitioners have also not been able to demonstrate any jurisdictional error as well.

10. The Civil Revisional application being C.O. 1024 of 2024 thus fails and is accordingly dismissed without any order as to costs.

All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)