

D/L - 2
27.01.2025
Court. No. 5
S.Kundu

**C.O. 2152 of 2024
With
CAN 1 of 2024**

**Sri Shyamal Karmakar & Anr.
Vs.
Sri Amal Karmakar & Anr.**

Mr. A. Das,
Mr. Suman Chaatopadhyay

...for the petitioners.

Mr. Anirban Kar,
Mr. Munshi Ashiq Elahi,
Ms. Vedatri Bhattacharya,
Mr. Rohit Mahato,
Ms. K. Akhter Ansari

...for the opposite parties.

1. Challenging the order dated 5th June, 2024 passed by the learned Civil Judge (Senior Division), 7th Court, Alipore in T.S. No. 833 of 2021, whereby the petitioners' application for addition of party under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) read with Section 151 thereof had been rejected, the instant revisional application has been filed.
2. To understand the controversy between the parties it is relevant to note down the facts. The plaintiffs and the defendants are related to each other. The plaintiff no. 1 and the defendant no. 1 are brothers and that plaintiff no. 2 is the sister while the defendant no. 2 is the wife of defendant no. 1. It is the plaintiffs' case that the father

of the plaintiffs and the defendant no. 1, late Balai Karmakar had acquired interest in the suit property by virtue of a registered deed of partition executed in the year 1994. The suit property comprises of 1 Cottah 3 Chittaks 31 sq. ft. of land together with a two storied building standing thereon being Premises No. 195, Diamond Harbour Road within Ward No. 130 and having mailing address 538, Diamond Harbour Road, P.S. – Parnasree, Kolkata – 700034. The plaintiffs claim that their father had executed a deed of gift on 21st March, 2001 and gifted the suit property unto and in favour of their mother Smt. Karuna Karmakar. The plaintiffs claim that after being seized and possessed of the aforesaid property their mother Karuna Karmakar constructed the second floor over the first floor of the suit property. Although, the plaintiffs claim that the defendant no. 1 was inducted in respect of the second floor by the petitioners' mother on leave and licence without any licence fee, the petitioners' mother Karuna Karmakar by a deed of gift executed on 15th July, 2020 had gifted the entire suit property unto and in favour of the plaintiffs. It is on the strength of the aforesaid deed of gift by notice in writing dated 13th March, 2021, the plaintiffs through their advocate had called upon the defendants to vacate and deliver vacant and khas possession of the suit property within 15 days from such notice. Defendants are contesting the suit by filing the

written statement as also the counter-claim. In the counter-claim the defendants have challenged the deed of gift executed by Smt. Karuna Karmakar on 15th July, 2020. Subsequently, the defendants had filed instant application under Order I Rule 10(2) of the Code. The plaintiffs on the other hand, have filed an application under Order XVIII Rule 16 of the Code, *inter alia*, praying for a direction to fix the date of pre-emptory hearing of the case and to allow the plaintiffs to present their mother as a witness.

3. By the order impugned, the learned Judge considering the rival contention of the parties had proceeded to reject the application under Order I Rule 10(2) of the Code, *inter alia*, by observing that though the defendants have claimed that Smt. Karuna Karmakar is a necessary party to the suit but since from the submission made by the parties, it would transpire that their mother is sick and her evidence is required to be taken as early as possible, while taking note of the fact that no relief has been sought for against Smt. Karuna Karmakar had rejecting the application under Order I Rule 10(2) of the Code and fixed the matter for hearing of the petition under Order XVIII Rule 16 of the Code.
4. Mr. Das, learned advocate appearing in support of the aforesaid application would submit that admittedly, gift deed executed by his mother forms subject-matter of the challenge in suit and the counter-claim has already

been filed. He would submit that it is necessary for Smt. Karuna Karmakar to participate in the suit and in her absence it would be difficult for the Court to ascertain whether the gift deed is genuine or not.

5. Mr. Kar, learned advocate representing the opposite parties/plaintiffs on the other hand, would submit that the only issue raised in the counter-claim is with regard to the genuineness of the gift deed executed on 15th July, 2020. He would submit that the plaintiffs are ready and willing to produce their mother as witness and their mother has agreed and consented to lead evidence. He would also submit that admittedly, their mother is sick and having regard thereto, the learned Judge has rightly rejected the application under Order I Rule 10(2) of the Code.
6. Having heard the learned advocates for the respective parties and considering the materials on record and noting that no relief has been sought for against the mother of the plaintiffs and the defendant no. 1, apart from challenging the deed of gift executed by their mother and since, it is also not the case of the plaintiffs that the licence had been determined by their mother rather the determination of leave and licence was by the plaintiffs on the strength of the deed of gift, I am of the view that Smt. Karuna Karmakar is not a necessary party. The learned Court in its discretion had refused to

add Smt. Karuna Karmakar upon ascertaining that she would appear as a witness. As such, no case for interference has been made out. At this stage, the parties would agree and jointly submit that the hearing of the suit before the trial Court may be expeditiously concluded by permitting their mother Smt. Karuna Karmakar who is of advance age and is suffered from old age related ailments, to be examined on commission.

7. Having regard thereto, I permit the plaintiffs/opposite parties to apply before the Learned Court by way of an application under Order XXVI Rule 4A of the Code of Civil Procedure for permitting Smt. Karuna Karmakar to be examined on commission subject to filing of an affidavit in chief by Smt. Karuna Karmakar. If such an application is filed within a period of 3 weeks from the date, the Learned Civil Judge (Senior Division), 7th Court, Alipore shall hear out such application and taking note of the advanced age and the age related ailments of Smt. Karuna Karmakar, permit her to be examined on commission.
8. Having regard thereto, I direct the learned Civil Judge (Senior Division), 7th Court, Alipore to advance the date of hearing of the application under Order XVIII Rule 16 of the Code and to pass appropriate orders so that taking of evidence of the mother of the plaintiffs and the defendant no.1 can be expedited. The learned Judge may

provide for necessary direction so that the defendants can cross-examine Smt. Karuna Karmakar.

9. It is expected that the application under Order XVIII Rule 16 of the Code shall be disposed of preferably within a period of 4 weeks from the date of communication of this order.
10. Accordingly, the revisional application stands disposed of. The connected application being CAN 1 of 2024 is also disposed of.

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

(Raja Basu Chowdhury, J.)