

24.3.2025
DL.4

Court No.652
sg

CO 2953 of 2018

Sk. Musadek Hossain & Ors.
Vs.
Samsunessa Begum & Ors.

Mr. Manas Kumar Das
Mr. Aritra Kumar Thokdar

....for the petitioners.

Mr. Prasanta Bishal

....for the opposite party No1.

The instant revisional application is directed against the order dated May 15, 2018 and February 17, 2017 passed by the learned Civil Judge (Junior Division), 1st Court, Katwa in Title Suit No. 82 of 2008. By an order dated February 17, 2017 an application filed on behalf of the opposite party no.1/ plaintiff no.9 in the title suit praying for transposing the present petitioners being present petitioner no.1 to 6 and 8 as proforma defendant in the suit from the position co-plaintiffs with plaintiff no.9 was allowed. The present petitioners were transposed in the Title Suit No. 82 of 2008 as proforma defendants on the allegations made on behalf of the plaintiff no.9/opposite party herein that they were creating hindrance in the early disposal of the suit, have

lost interest in the suit. Such application was allowed by the learned Trial Court by an order passed on February 17, 2017.

It is alleged on behalf of the petitioner that the copy of the petition under Order 1 Rule 10 of the Civil Procedure Code, praying for transposition of the petitioners as proforma defendant were never served upon them and the order was passed behind the back of petitioners without affording them an opportunity of being heard. It is alleged further on behalf of the petitioner that in the impugned order, it was wrongly noted that the petitioners were represented at the time of passing the order and that they conceded to such prayer of transposition.

Learned Advocate for the opposite party/plaintiff no.9 submits that the copy of the petition was duly served upon the petitioners and they were represented at the time of hearing of the petition under Order 1 Rule 10 CPC. It is also submitted that the order impugned was passed in presence of the learned Advocate for the petitioner.

Relying upon the order dated May 15, 2018, through which an application filed on behalf of the present petitioner seeking recalling of the earlier order dated February 17, 2017 was turned

down, it is submitted by the learned Advocate for the opposite party that since the order impugned was passed in presence of the petitioner therefore, it does not warrant any interference in the revisional jurisdiction.

I have gone through the impugned orders as well as materials placed before me. The petitioners and the opposite party jointly filed Title Suit No. 82 of 2008 against the tenants for eviction. It was the allegation on the part of the plaintiff no.9/opposite party no.1 that the petitioners/plaintiff no.(s) 1 to 6 and 8 were not pursuing the suit diligently, causing delay in the disposal of the original title suit.

In this context, an application under Order 1 Rule 10 of the Civil Procedure Code, by the opposite party no.1 was filed seeking transposition of the petitioners from the capacity plaintiffs to that as proforma defendant. Such prayer was allowed by the learned Trial Court by the impugned order. Impugned order notes that the plaintiff no.9 was one of the landlords in the suit premises and on such context as also taking into account, allegations made in the petition. Plaintiff no.9 filed a petition for transposition of unwilling plaintiffs as proforma defendant. The impugned order also notes that plaintiff no. 1 to 7 did not

raise any objection against the petition for transposition of the parties before such Court at the time of hearing of the petitioner.

It is evident that immediately after passing of the order dated February 17, 2017 the transposed plaintiffs filed an application on March 23, 2017 stating inter alia that the copy of the petition of transposition was never served upon them. They were not represented at the time of hearing of such petitioner under Order 1 Rule 10 of the CPC, such application on behalf of the petitioners was also rejected by the impugned order dated May 15, 2018.

At the time of hearing learned Advocate for the opposite no.1 was requested to place the documents establishing their claim that the copy of the petitioner under Order 1 Rule 10 of the CPC was served upon the transposed plaintiff. In answer to such query, learned Advocate for the opposite party no.1 submits that copy of the petition was served upon the learned Advocate Prasad Ranjan Saha, who was representing the defendant/tenant in the title suit. It has also been submitted on behalf of the learned Advocate for the opposite party that learned Advocate Prasad Ranjan Saha endorsed his knowledge on the margins of the impugned order passed by the

learned Trial Court was made in presence of the learned Advocate, Shri Shiv Shankar Midya who used to represent the petitioners. The said learned Advocate, Shiv Shankar Midya also put his signature in the margin of the impugned order. Nevertheless, the fact remains that the copy of the under Order 1 Rule 10 of the CPC was served upon the plaintiff no. 1 to 6 and 8, remains unsubstantiated.

Moreover, learned Trial Court in the impugned order, has noted no objection on the part of the plaintiff no. 1 to 6 and 8, although, they were not represented on such hearing.

Apart from that, there appears no subjective satisfaction in the impugned order with regard to the acceptance of the prayer for transposition of the plaintiff, although both the plaintiffs no. 1 to 6 and 8 and the plaintiff no.9 were joint landlords in respect of the suit premises. There is also no justification in the impugned order as to how the petitioners were not pursuing or creating hindrance in the early disposal of the original title suit.

Considering the aforesaid facts and circumstances of the case the impugned orders dated February 17, 2017 and May 15, 2018 are hereby set aside. Petitioners shall be restored to

their position as plaintiffs, as they were placed at the time of institution of the title suit.

Accordingly, civil revisional application being C.O. 2953 of 2018 is disposed of without any order as to costs.

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

(Md. Shabbar Rashidi, J.)