

14.11.2025
Item No.55
BR

CO 3572 of 2024

Jayanta Ghosh and another
-vs-
Sk Moktar Hossain and another

Ms. Reshmi Ghosh
Ms. Parna Mukherjee
.... For the petitioner

Mr. Patha Protim Roy,
Mr. Kajal Roy
.... For the O.P. No. 1

1. The revisional application has been preferred challenging an order dated 13.5.2024 passed in J. Misc. (P) 49 of 2021 (Jayanta Ghosh and another –vs- Sk. Moktar Hossain), pending before the learned Civil Judge (Junior Division), Additional Court, Tamluk, Purba Medinipur.
2. Vide the said order under challenge the learned trial Court was pleased to reject the petitioner's application under Order 1 Rule 10 Civil Procedure Code on the **following findings:-**

“.....Coming back to the instant petition, what is tried to be achieved by the petitioners through the proposed petition through addition of Sk. Sufi Ahamed as O.P. no. 2 under

Order 1 Rule 10(2) of CPC, is to get a sort of a relief to the effect of a declaration that the proceedings and the final order passed by the court in connection with J. Misc P 62/2001 is vitiated by fraud and collusion upon the Ld. Court and the same is totally a nullity and therefore the said order of the court passed in J. Misc P 62/2001 is not binding upon the petitioners, which is not at all possible in a pre-emption case as discussed before. Therefore said Sk. Sufi Ahamed is neither necessary party nor the proper party for this pre-emption case. This court is unable to give any sort of relief to the petitioners against Sk. Sufi Ahmed in this pre-emption case.

Hence, the petition dt. 26.02.2024 filed by the petitioners for addition of Sk. Sufi Ahmed as O.P. no. 2 is totally misconceived and lacking any merits in the eye of law. Therefore, the said petition dt. 26.02.2024 must be rejected.

Hence, it is

ORDERED

that the instant petition dated 26.02.2024 filed by the petitioners under Or. I Rule 10 of the CPC is hereby rejected without any order as to payment of cost.....

***Sd/-
Civil Judge (Jr. Divn.) Addl. Court
Tamluk, Purba Medinipur”***

- 3.** On hearing the learned counsel for the parties, it appears that the two

pre-emption cases were preferred and were pending before the same Court. Admittedly the petitioner's pre-emption case was the prior case but in due course the opposite parties pre-emption case was considered and was allowed in favour of the opposite party no. 2 herein.

- 4.** It is submitted by the petitioner that admittedly the property in question is the same property.
- 5.** Learned counsel for the petitioner submits that the petitioner has been severely prejudiced as the petitioner's prior case was not decided by the Court earlier nor could it be taken up with the pre-emption case filed by the opposite party no. 2, considering that it was not within the knowledge of the either parties or the Court.
- 6.** Admittedly the property in respect of which pre-emption has been prayed for has been transferred by the opposite party no. 1 in this case to the opposite no. 2. The opposite party no. 1 in this case is a party in the pre-emption case filed by the petitioner.

7. Considering all the facts and the fact that the property in respect of which pre-emption has been prayed for, is the same and both the parties had filed cases for pre-emption, this Court is of the view that the opposite party No. 2 herein is a necessary party in the pre-emption case for its proper adjudication.
8. The learned trial Court's order under challenge thus being not in accordance with law is set aside.
9. The application under Section Order 1 Rule 10 CPC is allowed. Opposite party no. 2 herein be added as a party in the pre-emption case as Opposite no. 2 also in the pre-emption case.
10. The trial Court shall proceed to dispose of the pre-emption case expeditiously preferably within 6 months from the date of this order.
11. **CO 3572 of 2024 stands disposed of.**
12. All parties to act on the server copy of this order.

(Shampa Dutt (Paul), J.)