

JPS-03
Ct No.01
01.08.2025
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction

C.O. 100 of 2025

Sri Uttam Das
Vs
Sri Mithun Das and others

Mr. Bapi Sarkar
Mr. Roumyadip Saha

.... for the petitioner.

- 1.** The present revisional application arises against an order whereby the learned appellate court allowed a miscellaneous appeal filed by defendant /opposite party nos.3 and 4, setting aside an ad interim order granted in favour of the plaintiff/petitioner by the trial court in a partition suit.
- 2.** The plaintiff/petitioner filed the partition suit on the averment that the plaintiff is a co-sharer of the property with defendant nos.1 and 2 and that defendant nos.3 and 4 are colluding with the defendant nos.1 and 2, thereby disturbing the possession of the plaintiff in respect of the suit property.
- 3.** Learned counsel for the petitioner submits that inadvertently, the defendant nos.3 and 4 were also described in paragraph no.3 of the plaint as co-

sharers whereas they are third parties and adjacent owners of the suit property.

4. The cause of action against the defendant no.3 is segregable as against defendant nos.1 and 2, since the partition has been sought primarily against the co-sharers/defendant nos.1 and 2 whereas other relief of injunction has been sought in view of the defendant nos.3 and 4 disturbing the plaintiff's ownership rights in respect of the property.
5. Whereas the learned trial Judge granted an *ad interim* in favour of the petitioner, the Appellate Court reversed the same primarily on the observation that the parties to the suit are not co-sharers, since the defendant nos.3 and 4 claim on the basis of transfer deeds in respect of separately demarcated properties, as opposed to the defendant nos.1 and 2.
6. It is contended that in view of the fact that the defendant nos.3 and 4 were impleaded in the suit not as co-sharers but as they were disturbing the possession and enjoyment of the suit property by the plaintiff in collusion with the defendant nos. 1 and 2, the premise on which the appellate court proceeded was without jurisdiction.
7. However, on a plain reading of the plaint, it is evident that in paragraph no.3 thereof, the plaintiff

has described the defendant nos.3 and 4 as co-owners as well.

8. Moreover, a question would arise as to whether the suit for partition would be maintainable in its present form and not be bad for misjoinder of parties/misjoinder of causes of action, since it is doubtful as to whether third parties apart from the co-owners of the property can be impleaded in a partition suit, particularly since the reliefs have been claimed in respect of properties exclusively belonging to such third parties too.
9. Apparently, the cause of action, in terms of submission made by learned counsel for the plaintiff/petitioner, in respect of the defendant nos.1 and 2, is different from that against the defendant nos.3 and 4.
10. Be that as it may, as the plaint stands as of today, I do not find any jurisdictional error or irregularity in the order of the First Appellate Court, which allowed the miscellaneous appeal on the premise that all the parties are not the co-sharers of the suit property and the issue of maintainability of the suit is hit.
11. However, I make it clear that nothing in this order shall prevent the plaintiff/petitioner from having his plaint amended and/or relinquishing a part of the prayers and/or segregating the causes of action

against the parties either by way of amendment to the plaint or otherwise.

- 12.** In the event such amendment is applied for and/or other corrective measures to render the suit maintainable are taken and allowed by the learned Trial Judge, the plaintiff/petitioner will be at liberty to file a fresh injunction application.
- 13.** Accordingly, C.O. 100 of 2025 is dismissed, thereby affirming the impugned judgment and order dated March 6, 2025 passed by the learned Additional District Judge, Second Court at Alipurduar in Miscellaneous Appeal No.18 of 2024 in the light of the observations and liberties mentioned above.
- 14.** There will be no order as to costs.
- 15.** Urgent certified copies, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)