

01.07.2026
Court No.2
Item No.47
sudipta

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

CO 3438 of 2024

**Krishna Gopal Roy & Ors.
Vs.
Kuber Roy & Ors.**

Mr. Arup Krishna Das
Mr. Rajarshi Ghosh

...for the petitioners

Mr. B. B Dey
Ms. Shetparna Roy

...for the opposite party nos. 1 to 5

1. Present petition has been filed challenging the order no.8 dated 4th October, 2023 and order no. 16 dated 23rd August, 2024 passed by the learned Civil Judge (Jr. Div.), Additional Court, Asansol. The petitioners herein had moved an application under Order 1 Rule 10(2) CPC for impleading them as party in suit for declaration filed by the opposite parties herein in Title Suit No. 39 of 2023. Learned Counsel for the petitioners submits that regarding the same subject matter of property the predecessor-in-interest of the petitioners herein had filed a Title Suit no. 111 of 2008 against the present opposite parties and others for partition which is pending disposal. The learned Trial

Court vide order dated 4th October, 2023 rejected the application for impleadment predominantly on the ground that the opposite parties / plaintiffs are the *dominus litis* and, therefore, a party cannot be impleaded unless the court is satisfied that presence of such a party is necessary and such party has some interest in the subject matter of the suit. The petitioners filed a review application dated 6th December, 2023 against this order. Vide order dated 23.08.2024 learned Trial Court rejected this application also on the ground that there is no scope for the review. Learned Trial Court also rejected the prayer taking into account Section 35 of the Specific Relief Act.

2. Learned counsel for the petitioners submits that the order of the learned Trial Court is erroneous as the presence of the present petitioners are just and necessary for the proper adjudication of the merit in dispute. Learned counsel for the petitioners submits that petitioners have claimed themselves to be the owner of some of the properties which are the subject matter of the subsequent suit filed by the opposite parties / plaintiffs. Learned counsel submits that if the petitioners are not made to be the party in the subsequent suit for declaration filed by the opposite parties / plaintiffs, the declaration of title in favour of the opposite parties / plaintiffs would be seriously

prejudiced the petitioners, particularly in view of the fact that the suit for partition is already pending.

3. Per contra, learned counsel for the opposite parties has opposed the prayer and submits that the opposite parties / plaintiffs in Title Suit no. 39 of 2023 have not sought any relief against the present petitioners. Learned counsel submits that opposite parties / plaintiffs have only sought declaration against the Eastern Coalfields Limited and its officers / agents. Learned counsel also submits that no cause of action had arisen against the petitioners herein and their presence is not at all necessary for the proper adjudication of the merit in dispute.

4. The Court has considered the submissions and perused the record herein. Order 1 Rule 10(2) CPC provides as under.

“...(2) **Court may strike out or add parties.**- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

5. The bare perusal of this makes it clear that a party can be impleaded if such a party has a right to the relief claimed in respect of the dispute in the proceedings or

no effective decree can be passed in absence of such a party. It is further a settled proposition that a party can be impleaded only if its presence is necessary relating to the controversy raised between the parties to such suit as being set up by the plaintiffs. The party cannot be impleaded merely because that there may be some dispute between the parties sought to be impleaded and the plaintiffs. Reliance can be placed upon the decision of the Hon'ble Supreme Court in the case of **Kasturi Vs. Iyyamperumal & Ors.** reported in **(2005) 6 SCC 733.**

6. The basic test is that a party cannot be allowed to be impleaded merely because such a party claims himself to be interest in the subject matter of the suit. The party can be impleaded only if his presence is necessary for adjudication of the subject matter of the dispute. Under the garb of Order 1 Rule 10(2) CPC the controversy between the parties cannot be allowed to be widened. In this respect Section 35 of the Specific Relief Act, 1963 is also worth taking into consideration. Section 35 of the Specific Relief Act, 1963 provides as under.

“35. Effect of Declaration. – A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of declaration, such parties would be trustees.”

7. The bare perusal of Section 35 makes it clear that declaration would only be effected against the persons against whom the suit has been filed. The opposite parties / plaintiffs have only sought a declaration against the Eastern Coalfield Limited and its officers and that would certainly be effective only against such persons. In **Snp Shipping Services Pvt. Ltd. & Others vs World Tanker Carrier Corporation** reported in **AIR 2000 Bombay 34**, it was, inter alia, reiterated that the declaration under Section 34 of the Specific Relief Act, 1963 is in *personam* and not in *rem*. Thus, the Court considers that the presence of the present petitioners is not necessary in order to enable the Court to effectually and completely adjudicate the matter between the parties in Title Suit no. 39 of 2023. The Court considers that if the petitioners are allowed to be impleaded, the scope of the suit shall be widened. The suit would include the issue of ownership between the opposite parties / plaintiffs and petitioners, which is not at all relevant.

8. In view of the discussions made hereinabove, this Court finds that there is no illegality or infirmity on merits in the order of the learned Trial Court. Hence, the present revisional application stands dismissed.

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

(Dinesh Kumar Sharma, J.)