

Rama Chatterjee and anr. Vs. Somnath Ghosal and anr.

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Court : Kolkata

Decided On : Nov-02-1998

Reported in : (1999)1CALLT254(HC)

Judge : Dibyendu Bhusan Dutta, J.

Acts : Code of Code of Civil Procedure (CPC), 1908 - Section 151 - Order 1, Rules 9, 10(2) and 19(2)

Appeal No. : Civil Revisional Jurisdiction C.O. No. 2418 of 1998

Appellant : Rama Chatterjee and anr.

Respondent : Somnath Ghosal and anr.

Advocate for Def. : Mr. Asit Baran Rout, ;Mr. A.N. Banerjee and ;Mrs. Leena Panja, Advs.

Advocate for Pet/Ap. : Mr. Ashoke Banerjee, ;Mr. S. Sengupta and ;Mr. P.K. Ganguly, Advs.

Judgement :

D. B, Dutta, J.

1. The present revisional application is directed against the order Nos. 44 and 46 dated 5.6.98 and 8.6.98 passed in Title Suit No. 3500 of 1996 by the 11th Bench, City Civil Court, Calcutta whereby the application under Order 1 Rule 10(2) read

with section 151 C.P.C. has been rejected. The suit is for recovery of Khas possession of certain properties described in Schedules A and B upon a declaration on that the defendant is a rank trespasser in relation to the said properties and also for a permanent Injunction restraining them from encroaching, upon and taking forcible possession of the properties described in Schedule C of the plaint. The plaintiff has sued in the capacity of the managing trustee to the estate of Shri Shri Annapurna Thakurani and Shri Shri Durgamata Thakurani. It is alleged on behalf of the plaintiff that the suit properties are all comprised within the said trust estate created in the year 1891. The defence case is that these properties are not comprised within the said trust and that the plaintiff is also not the sole trustee thereof. It is the further case of the defendant that he is a tenant under the plaintiff and other co-shares of the properties. His further case is that he is not a trespasser and that the suit is bad for non-joinder of parties. The petitioners filed an application under Order 1 Rule 10(2) C.P.C. for being Impleaded as party defendants. Their case is almost on the same lines on which the defendant is contesting this suit. It is also their case that the suit-properties are not included within the trust that was created in the year 1891 and that the plaintiff is not the sole managing trustee. Their further case is that the defendant is a tenant under them as well as other co-sharers of the properties. Under Order 1 Rule 10(2) C.P.C., the court may allow a party to be added in a suit only when he is either a necessary or a proper party. Necessary party is he whose presence is essential for granting an effective relief in the suit and in those absence the suit must fail. The proper party, on the other hand, is he whose presence may be necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit and under Order 1 Rule 9 C.P.C. the suit does not fail by reason of nonjoinder of a proper party and the court may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Having perused the copies of the plaint and the written statement filed before this court and Issues already framed In the suit, it is not understood how the petitioners could be necessary or proper parties in this suit. If the plaintiff falls to prove that the suit properties are included in the trust or that the plaintiff is the sole managing trustee of the said trust or that the defendant is not a rank trespasser as alleged by him, the plaintiff shall be out of court. The

petitioners' case is not based on the deed of trust. They claim their right by virtue of Inheritance from the ancestors. Having regard to the nature and character of the suit I am of the view that the petitioners' presence would not at all be necessary for effective adjudication of the matters in controversy involved in this suit. It is settled law that the court will have no jurisdiction to allow a party to be added unless he is either a necessary or a proper party. Having regard to the materials on record I cannot persuade myself to accept the contention put forward on behalf of the applicants that they are necessary or proper parties. If the defendant succeeds in establishing his alleged rights, the suit will fail and for establishing his tenancy the presence of the present applicants as party in the suit will not be necessary. The mere fact that the applicants may be material witnesses in support of the defence case cannot make them necessary or proper parties within the meaning of Order 1 Rule 10(2) C.P.C. In the circumstances there is no jurisdictional error on the part of the court below in refusing to allow the petitioners to be added as party defendants. After all, a party cannot be allowed to be added so as to introduce a new cause of action in the suit and if the petitioners are allowed to be added as a party, the present suit which is one for eviction of a rank trespasser would be converted into a full fledged suit for title introducing a new cause of action. In the circumstances, the revisional application is dismissed without any order as to costs.

2. Application dismissed

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