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Jitendra Prasad Shukla Vs Dola Banerjee and Others

Court: Calcutta High Court

Date of Decision: July 6, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 10

Citation: (2012) 4 CHN 544

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Jiban Ratan Chatterjee and Mr. Partha Pratim Roy, for the Appellant;R.N. Dutta and Mr. Moupriya De Bose, for the Respondent

Final Decision: Allowed

Judgement

Soumen Sen, J.
The opposite party No. 1/plaintiff filed a suit claiming declaration and permanent injunction. In the suit the plaintiff alleged

that in spite of repeated demands and requests by the plaintiff, the defendant No. 1 did not comply with the agreement and on the other hand

already sold five flats to the defendant nos. 2 to 6 under five separate registered sale deeds illegally and with ill motive, but the said defendants did

not get any possession of the flat till date. In the suit, the plaintiff did not pray for cancellation of the said defendants. Subsequently an application

was filed for addition of parties. The first ground is that the defendant No. 1 disposed of three flats in favour of three persons by virtue of three

registered deed of sale which came to the knowledge of the plaintiff after filing of the suit and after obtaining the certified copy from the registry

office during the period 2004-2006. The addition of parties was prayed in order to avoid any future complications. It is alleged that such

purchasers are required to be brought on record since the defendant No. 1 sold the property in favour of the said three persons. The application

does not disclose the necessary pleading nor fulfill the ingredients that are required to be present for addition of parties. If the defendant has sold

the flats out of his own shares and are permitted to do so under the agreement, there is no necessity to implead such purchasers. The presence of

the said parties would not facilitate a decision on declaration and injunction. In an application under Order 1 Rule 10 of the Code of Civil

Procedure, the Court should not permit the enlargement of scope of the suit and unnecessary parties should not be brought on record. In fact that

would create further complications and would cause inconvenience at the trial. In view thereof, there was no requirement for adding such

purchasers as parties in the suit. The learned Judge also recorded that the petitioners have failed to establish as to how the presence of the said

purchasers would be necessary for deciding the issues in the suit. Learned counsel appearing for the Opposite Party relied upon a decision in the

case of Savitri Devi vs. District Judge, Gorakhpur reported in AIR 1999 Supreme Court 976 and also a decision in the case of Dhanalakshmi and

Others Vs. P. Mohan and Others, for the proposition that the said subsequent purchasers are necessary parties in the suit. In Savitri Devi (supra)

addition of party was allowed since during the pendency of the suit filed by the mother against the son for maintenance and creation of charge over

ancestral properties, one of respondent sons sold the said properties in favour of the third party and in that context it was held that purchasers are

necessary parties to the suit. It was held that their impleadment is necessary for deciding the question whether sales were committed in contempt

and disregard of injunction and whether such purchasers were bona fide purchasers. Such impleadment was allowed in order to avoid multiplicity

of suits. In Dhanalakshmi (supra) in a partition suit some co-sharers sold their undivided share in the property during the pendency of the suit. The

petitioners claimed to be bona fide purchasers of the suit property. In that context, it was held that they would be necessary and proper parties to

the suit.

2. The said decisions are however, not applicable to the facts of the present case.

3. The impugned order is set aside in so far as it allowed the addition of parties of the subsequent purchasers as defendants. The deletion of name

of the HMC is not however, interfered with and the order to that effect is remained.

4. The revisional application succeeds in part and is accordingly allowed to the aforesaid extent.

5. This Court however, feels that the matter is eminently fit for resolution through mediation. The learned Court for the opposite party however, did

not agree and accordingly the matter has not been referred to mediation. However, this Court feels that it would be open for the parties to

approach the trial Court for referring the dispute to mediation. Photostat certified copy of the order, if applied for, be given to the parties on usual

undertaking.