
(2010) 12 CAL CK 0093

Calcutta High Court

Case No: C.O. No. 1399 of 2006

Sri Bijali Kumar Manna

APPELLANT

Vs

Sri Tarun Manna and
Others

RESPONDENT

Date of Decision: Dec. 13, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2)

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Buddhadeb Ghosal and D.S. Roy, for the Appellant; Gitali Roy, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Defendant No. 1 and is directed against the order No. 39 dated March 20, 2006 passed by the learned Civil Judge (Senior Division), Second Court, Howrah in Title Suit No. 42 of 2002 thereby allowing an application under Order 1 Rule 10(2) of the Code of Civil Procedure.

2. The short fact is that the Petitioner instituted a title suit being Title Suit No. 29 of 1992 for declaration of his share and partition. That suit was decreed in the preliminary form. Thereafter, a partition commissioner was appointed and he submitted a report. Thereafter, the final decree was drawn up on May 15, 1996. Sri Tarun Manna was the Defendant No. 6 in the said Title Suit No. 29 of 1992. Subsequently, Sri Tarun Manna filed a suit for partition being Title Suit No. 42 of 2002 and in that suit he filed an application for addition of parties and that application was allowed by the impugned order. Being aggrieved, the Defendant No. 1 of the said suit, namely, Title Suit No. 42 of 2002, has preferred this application.

3. Now, the point for consideration is whether the learned Trial Judge is justified in allowing the application under Order 1 Rule 10(2) of the CPC Upon hearing the learned Counsel for the parties and on perusal of the materials on record, I find that admittedly, the Petitioner filed the Title Suit No. 29 of 1992 for partition with declaration of his share in respect of the property in suit being the premises No. 40, Jaynarayan Babu & Ananda Dutta Lane, under P.S. Bantra, District - Howrah. Admittedly, that suit was decreed in the preliminary form. Admittedly, a survey passed commissioner was appointed to effect partition and then the final decree for partition was passed on May 15, 1996. Thus, I find that the earlier suit for partition in respect of the property in suit has reached its finality.

4. Subsequently, the Defendant No. 6 of that suit (T.S. No. 29 of 1992) filed the Title Suit No. 42 of 2002 for partition of the selfsame property, i.e., 40, Jaynarayan Babu & Ananda Dutta Lane, under P.S. Bantra, District - Howrah. In that suit, the Plaintiff, namely, Sri Tarun Manna, has prayed for declaration, injunction and for partition by reopening of the partition on setting aside the final decree. During pendency of the subsequent suit, the Plaintiff sought for addition of parties as many as 5 persons who are none but the adjoining owners possessing the holding No. 41, Jaynarayan Babu & Ananda Dutta Lane, under P.S. Bantra, District - Howrah.

5. The contention of the Plaintiff of the subsequent suit is that the learned commissioner has shown in his report about an imaginary passage running from North to South of the western side of the property in suit and also a passage of the suit property on its southern side running from East to West. The said passage as shown in the commissioner's report is not the passage of the suit holding. So, the adjoining owners should be added as parties to the suit.

6. Since the Title Suit No. 42 of 2002 being one for declaration, injunction and for partition with regard to the property under holding No. 40, Jaynarayan Babu & Ananda Dutta Lane, under P.S. Bantra, District - Howrah, the parties should be confined to the owners of the holding in suit and not to any adjacent owners. Moreover as stated above, the earlier suit being Title Suit No. 29 of 1992 having reached its finality, there is no scope for addition of the adjoining owners as parties to the present suit. If the addition of parties is allowed to continue, effect would be the addition of the adjoining owners in a suit virtually meant for partition. The added parties will file their written statements according to their stand. The scope of determining the lis between the parties to the partition suit will not be limited to the partition matter. The scope of dispute will be widened leading to unending situation of the partition suit. The learned Trial Judge has, therefore, misdirected herself in allowing the application under Order 1 Rule 10(2) of the CPC and so the impugned order cannot be supported at all.

7. Therefore, the application succeeds. It is allowed.

8. The impugned order is hereby set aside. The application under Order 1 Rule 10(2) of the CPC filed by the Plaintiff of the Title Suit No. 42 of 2002 stands rejected.

9. Considering the circumstances, there will be no order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.