

In The High Court At Calcutta

Civil Revisional Jurisdiction

Appellate side

Present :

The Hon'ble Justice Harish Tandon.

C.O. No. 1455 of 2011

Magma Leasing Ltd. & Anr.

-vs-

Keshava Nandan Sahaya & Ors.

For the petitioners : Mr. S.P. Mukherjee,
: Mr. Mainak Bose,
: Mr. A. Mitra,
: Ms. Dolon Dasgupta.

For the O.P. No. 10 : Mr. Hirak Mitra,
: Mr. Debasish Roy,
: Mr. Gopal Pahari,
: Ms. Piyali .

For the O.P. No. 2A, 2B, 2C : Ms. Anjana Banerjee
3,4, 5, 6, 7 & 8

Judgment on : 31.10.2014

HARISH TANDON, J.:

This revisional application is directed against order dated March 15, 2011 passed by learned Civil Judge (Senior Division), 9th Court,

Alipore in Title Suit No. 17 of 2002 by which an application under Order 1 Rule 10 (2) of the Code of Civil Procedure is allowed.

The original plaintiff namely Jyoti Kumar Rajgarhia through the joint receivers instituted Title Suit No. 17 of 2002 in the 9th Court of Civil Judge (Senior Division), Alipore praying for a decree for declaration of his title in respect of the premises described in the Schedule 'A' to the plaint and a decree for 'Khas' possession by evicting the defendants/opposite parties from the portion of Schedule 'A' property as fully described in Schedule 'B' thereto and a decree for permanent injunction restraining the defendants/opposite parties from transferring or alienating and/or creating any third party interest.

The property which is included in Schedule 'A' to the plaint, as would decipher therefrom, is premise no. 32, Raja Santosh Road measuring more or less 2 Bighas 12 Chittacks 13 Sft. within District 24 Parganas, South. The boundaries of the said premises is also depicted therein and is butted and bounded on the south partly by premise no. 14 Alipore Avenue and partly by premise no. 13 Alipore Avenue and partly by vacant plot of land being premises no. 24/7 Raja Santosh Road. Schedule 'B' to the plaint from which the recovery of possession is

sought being the south western portion of the premise no.32 Raja Santosh Road, P.S- Alipore is shown to have butted and bounded on the South by premises no. 24/7 Raja Santosh Road and premises no. 13 & 14 Alipore Avenue.

According to the plaint case, the said premise no. 32 Raja Santosh Road, Alipore was formerly known as premises no. 15 & 18 Alipore Park Road and was acquired by dint of purchase by the great grand father of the plaintiff namely Inderchand Rajgarhia on October 5, 1929. After the death of the said original owner, his heirs filed a partition Suit No. 1118 of 1956 before the High Court at Calcutta in which a sole arbitrator was appointed for adjudicating the disputes between the parties to the said partition suit. By making and publishing an award, the arbitrator allotted the premise no. 32 Raja Santosh Road to Smt. Gita Devi Rajgarhia to be held and enjoyed by her as her absolute property. The said award culminated into a decree upon passing a judgment on award. The said Gita Devi Rajgarhia by executing and registering a deed of gift dated November 20, 1961 gifted the said premise no. 32 Raja Santosh Road, Alipore to the plaintiff who was then a minor. The plaint further proceeds that prior to the execution and registration of the deed of gift, the said property was requisitioned by the Government of West Bengal

under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 for the Consulate General of Japan. Subsequently, an agreement was entered into by and between the Consulate General and the original plaintiff through his natural guardian by which the Consulate General agreed to allow the original plaintiff to occupy a portion of the lawn lying on the south west side of the main building of the said premises, together with the strip of land leading to the said portion. The original plaintiff further averred that some times in December 1983, the defendant/opposite party trespassed into the property described in Schedule B to the plaint. It further appears that a Civil Suit No. 73 of 1997 was instituted in the Original Side of the High Court at Calcutta and joint receivers were appointed in respect of the said premises with liberty to conduct the instant suit. Pursuant to such liberty, the names of the joint receivers were included in the cause title. By an order passed by the High Court in the said suit, the front portion of the said premise no. 32, Raja Santosh Road was sold to the present plaintiffs which was subsequently numbered as 32 A, Raja Santosh Road with further leave to be substituted in the instant suit in place and in stead of the joint receivers.

The appearing defendants are contesting the said suit by filing the written statement setting up a defence that they have acquired the title by purchase in respect of a land measuring 16 Cottahs and 4 Chittacks together with a structure erected thereupon being the portion of the premises no. 24/7 which is now renumbered as premises no. 24/7/1 Raja Santosh Road, Kolkata- 700 027 from the erstwhile owner. The other defendants also laid their claim of ownership and title in respect of the premises no. 24/7/1 in their separate written statement.

What could be culled out from the defence taken by their respective defendants is that they have claimed the title on the premise no. 32 Raja Santosh Road but asserted their right in respect of a premises no. 24/7/1 Raja Santosh Road, Kolkata- 700 027.

Subsequently, an application for amendment was taken out by the plaintiff/petitioner by which they sought to amend Schedule B appended to the plaint which was eventually allowed. Assailing the said order, the defendants preferred a revisional application being **C.O. No. 1485 of 2003** before this Court and the bone of contention, as would be revealed from the order dated June 30, 2004 by which the said revisional application is disposed of, is that by virtue of the said amendment, an

attempt is made to include the premises no. 24/7/1 Raja Santosh Road in the suit. This Court expressly recorded that the claim is restricted to the premise no. 32 Raja Santosh Road and not in respect of the premises no. 24/7/1 Raja Santosh Road and, therefore, such apprehension is unfounded. This Court expressly recorded that if any attempt is made to rope in or involve the premises no. 24/7/1 Raja Santosh Road within the ambit of the property sought to be recovered, the plaintiff/petitioner shall continue to remain bound by their admission that by the proposed amendment, the premises no. 24/7/1 Raja Santosh Road is not included. However, in order to eradicate or clear the mists as created relating to the identity of the properties, an application under Order 26 Rule 9 of the Code was taken out by the plaintiffs/petitioners for appointment of the Commissioner for investigation on the points enumerated therein. The said application was allowed by Order No. 47 dated May 9, 1996 by the Trial Court. Subsequently, an application for addition is filed at the instance of the opposite party no. 10 praying for his addition primarily on the ground that he has acquired an interest in respect of 1 cottah 12 chittacks of land by purchase from the original owner being the portion of the premises no. 24/7/1 Raja Santosh Road. It is further stated in the said petition that a suit for partition being Title Suit No. 63 of 1990 filed by him in the first Court of Civil Judge (Senior

Division) at Alipore against the defendants is still pending. The knowledge of the instant suit is imputed by the opposite party no. 10 on 5th August, 2010 from one Keshava Nandan Sahaya and ors. being the defendant of the present title suit. The plaintiffs/petitioners reiterated their stand, as had been taken before this Court in earlier revisional application, in the written objection that they have got nothing to do with the premises no. 24/7/1 Raja Santosh Road but their claim is restricted to the premise no. 32 Raja Santosh Road and, therefore, the opposite party no. 10 is neither or necessary nor a proper party to the suit. The Trial Court allowed the said application as the impleadment of the opposite party no. 10 as one of the defendants would protect the right and title of the petitioner in respect of the portion for which he claimed title.

Mr. Mukherjee, the learned Advocate appearing for the petitioner, at the very outset, submits that the claim of the plaintiffs/petitioners are restricted to the premises no. 32, Raja Santosh Road and the boundaries depicted in the Schedule A & B to the plaint is self- explanatory. According to him, on the south of the premises being the subject matter of the suit, it is butted and bounded by a portion of the premises no. 24/7/1 and, therefore, the opposite party no. 10 should not be added as

party-defendant to the suit, on mere apprehension that the plaintiffs/petitioners are admitting to rope in or involve the premises no. 24/7/1 in the suit. He audaciously submits that unless the person seeking his addition as party-defendant to the suit has direct or the substantial interest in the subject matter involved therein, he cannot be termed to be a necessary and proper party. To buttress his submissions, he placed reliance upon a judgment of the Supreme Court rendered in case of **Razia Begum -vs- Sahebzadi Anwar Begum & ors.** reported in **AIR 1958 SC 886** and a division bench judgment of this Court in case of **Mukund Shah -vs- M/s. Golden Polyester Industries Pvt. Ltd.** reported in **1979 (1) CLJ 258**. He, therefore, concludes that the opposite party no. 10 has neither direct or substantial interest in the subject matter of the suit nor his presence is required for determination of the disputes involved in the said suit.

Mr. Hirak Mitra, the learned Senior Advocate appearing for the opposite party no.10 submits that the schedules appended to the plaint if taken in its perspective would reveal that the premises no. 24/7/1 Raja Santosh Road is included therein, although there is no express indication of the premises owned by his client. He further submits that by a clever draftsmanship, the premise owned by his client has been

shown to be within the premise no. 32 Raja Santosh Road and, therefore, he is a necessary and proper party. He further submits that a suit for partition has been instituted by his client against the defendants of the present suit which is indicative of the fact that the premises no.24/7/1 is the subject matter of the present suit and, therefore, cannot be decided and or determined in absence of his client who have acquired the title by a valid deed from the rightful owners. He also placed reliance upon the judgment cited by Mr. Mukherjee decided by the Apex Court in case of **Razia Begum (supra)** to contend that his client has direct and substantial interest in the subject matter of the suit and, therefore, is a necessary and proper party.

Miss Anjana Banerjee appearing for the rest of the appearing defendants/opposite parties, however, adopts the submission of Mr. Mitra and supported the claim of the addition.

Order 1 Rule 10 (2) of the Code of Civil Procedure vested the power on the Court to add or strike out the names of the party in the suit. A party can be added in a suit either as a plaintiff or the defendant provided he is a necessary and proper party meaning thereby without

whose presence the suit cannot be effectively and completely determined and his presence is required for complete and effective adjudication.

In Razia Begam's case, it is held that a person may be added as a party either as plaintiff or the defendant when (i) they ought to have been joined as a party (ii) his presence is necessary for complete and effective adjudication of the dispute (iii) the presence of the party is considered appropriate for effective decision of the case.

The person should have the direct interest in the subject matter of the suit and not the commercial one. The person, even if, effected by a decision of the suit in commercial sense, does not come within the purview of the necessary and proper party. The expression "all the questions involved in the suit" is significant to ascertain whether the person sought to be added is a proper and necessary party. The expression should be construed to mean the controversies raised between the parties to the litigation with regard to the rights set up and the relief claimed therein and had been denied by the other party. Where the subject matter of litigation is a declaration of title or legal character, the person, who would be vitally effected directly and not in commercial sense, should be added as a party in a proceeding.

The Apex Court in case of **Kasturi -vs- Iyyamperumal & Others;** reported in **(2005) 6 SCC 733** clearly laid down that if a person is necessary or a proper party, the Court enjoins power to add for complete and effective adjudication of the questions involved in the suit in these words:

“11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker v. Small* made the following observations: (ER pp. 850-51)

“It is not disputed that, generally, to a bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much

strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.”

(emphasis supplied)

12. The aforesaid decision in *Tasker* was noted with approval in *De Hoghton v. Money*. Turner, L.J. observed at Ch p. 170:

“Here again his case is met by *Tasker* in which case it was distinctly laid down that a purchaser cannot, before his contract is carried into effect, enforce against strangers to the contract equities attaching to the property, a rule which, as it seems to me, is well founded in principle, for if it were otherwise, this Court might be called upon to adjudicate upon questions which might never arise, as it might appear that the contract either ought not to be, or could not be performed.”

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”

On the above broad conspectus of the law enunciated on the subject, let me consider whether the petitioner ought to have been joined as a party in the suit. No doubt, a suit for declaration of title and recovery of possession on the strength thereof, is filed against some of the defendants who according to the plaintiff have been in unlawful occupation. It is clearly discernible from the plaint that the declaration and the recovery of possession is sought in respect of Premises No. 32, Raja Santosh Road, Kolkata and not in respect of the Premises No. 24/7/1, Raja Santosh Road, Kolkata. The petitioner, who sought his

addition claimed his title on the dint of purchase in respect of the Premises No. 24/7/1, Raja Santosh Road, Kolkata. A party cannot be joined in a suit merely on the allegation that though the property described in the schedule to the plaint is different, but it is intended to include the other property unless, it is manifest on the basis of the documents that the plaintiff, in fact, intended so. In an earlier revisional application, filed before this Court, there has been a categorical assertion on the part of the plaintiff that they have not included the Premises No. 24/7/1 in the suit nor they are claiming any right in respect thereof. The Court in clear terms recorded that the plaintiffs are bound by their own admission and the apprehension is unfounded. The added defendants have categorically asserted that he has filed a suit for partition against the principle defendants of the suit in respect of a premises no. 24/7/1, Raja Santosh Road which is still pending and, therefore, he should be added as a party-defendant in the present suit.

As already indicated above, the property which is the subject matter of the suit is Premises No. 32, Raja Santosh Road and according to the plaintiffs/petitioners, the principle defendants have encroached upon the portion thereof which does not necessarily mean that the added defendants should be included in the suit as the suit for partition

in respect of the other premises is pending between the added defendants and the principle defendants.

The learned Advocate appearing for the added defendants tried to impress upon this Court that in the garb of the Premises No. 32, Raja Santosh Road, the plaintiff/petitioner is really trying to recover the possession from his client who has a semblance of right, title and interest in a portion of Premises No. 24/7/1, Raja Santosh Road, Kolkata. The aforesaid submission has no basis for the simple reason that the plaintiff/petitioner have taken a specific stand that the suit is restricted to the Premises No. 32, Raja Santosh Road, Kolkata and such admission has been recorded in an earlier revisional application filed before this Court and this Court has clearly an in express terms recorded the aforesaid submissions which could bind the plaintiff/petitioner in all stages of the proceeding.

In view of the discussion made herein above, the order impugned in this revisional application is not sustainable. The same is hereby set aside.

The revisional application is allowed.

The Trial Court is requested to make all efforts to dispose of the suit as expeditiously as possible without granting unnecessary adjournments to either of the parties and preferably within a year from the date of the communications of this order.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Harish Tandon, J.)