

T.S. 1895 /2005 CNR – WBCC01003248-2005

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 124

08.12.23

Today is fixed for hearing the application of the defendant no 5 dtd 29.8.23 u/o 22 Rule 2 & 5 read with section 151 CPC.

The defendant no 4(a) files a petition praying for time to file WS on the ground stated therein. The defendant no 5 files hazira. Plaintiffs file written objection against the said application of the defendant no 5. Copy has been served. Objection has been raised.

Heard the Ld. Advocates for both the plaintiffs and defendant no 5.

Perused the application, whereby the defendant no 5 has prayed for passing necessary order to delete the name of defendant no 4 from the cause title of her counter claim on the ground that the said defendant no 4 is dead and her heirs and legal representatives are already on record.

It appears from the record that the instant suit has been filed by the plaintiffs for declaration, injunction and other consequential reliefs on the basis of their claim that the fixed deposit standing in the joint names of defendant no 1 and defendant no 3 is illegal, invalid and void on the ground that the original plaintiff (since deceased) was solely entitled to the amounts lying in the said fixed deposit as well as for declaring a deed of gift dtd 17.6.04 executed by the original plaintiff in

favour of defendant no 1 in respect of his share in the suit property is invalid and void on the ground that the same is vitiated by threat and coercion.

The defendant no 5 has been contesting the suit by filing her written statement praying for dismissal of the suit as well as by filing counter claim praying for declaration, partition, injunction and other consequential reliefs on the plea that the suit property is an undivided joint property, in which she has undivided 1/6th share. According to the defendant no 5, the heirs and legal representatives of the deceased defendant no 4 being already on record and the defendant no 4 (a) not having acquired any share in the suit property upon the death of defendant no 4, her counterclaim should proceed only by deleting the name of defendant no 4 from the cause title of the counter claim.

The record shows that on the death of defendant no 4, the plaintiffs came up with an application u/o 22 Rule 4 CPC, whereby the defendant no 4(a) has been brought on record as the husband of the said deceased defendant. At the time of disposal of the application of the plaintiffs u/o 22 Rule 4 CPC by Order no 121 dtd 22.8.23, observation has clearly been made to the effect that the question as to whether right to sue against the defendant no 4(a) really subsists or not, the same cannot be answered properly unless all the material evidence in respect of the disputes involved between the parties is on record. The record shows that the name of defendant no 4 has already been deleted from the cause title of the plaint.

In view of the above position, I am of the considered opinion that the prayer made by the defendant no 5 in the application under consideration cannot be disposed of at this stage and the same will be taken up for consideration along with the final hearing of this suit.

Hence it is

Ordered

that the application of the defendant no 5 dtd 29.8.23 u/o 22 Rule 2 & 5 read with section 151 CPC is kept in abeyance for the time being on condition that the same will be taken up for consideration and disposal along with the final hearing of this suit.

Fix 25.1.24 for further cross examination of PW 2.

D/C by me

Judge

Judge 2nd Bench