

Order dated : 27/02/2025

Record is fixed for WO order I Rule 10 (2) of CPC and hearing.

Both the contesting sides file their respective haziras.

Ld. Advocate for defendant files WO for the application u/o I Rule 10 (2) of CPC.

Now the record is taken up for hearing.

Heard the submission of both the sides.

By filing this application under Order I Rule 10 (2) of CPC plaintiff submits that Usha Biswas has given consideration time to time to defendant no. 1 (Reba Chakraborty) for purchase of a flat in the suit property. As per averment of plaintiff due to instigation of proforma defendant and other defendant the said property was sold to proforma defendant. By filing this application of Order I Rule 10 (2) of CPC plaintiff prays for adding of Smt Usha Biswas as plaintiff no. 2 in this suit.

Defendants by filing WO has contested this said application. By filing the WO defendant submits that plaintiff cannot be allowed to add any third person as plaintiff as per their averment made in paragraph no. 5, 6 and 7 as the same is barred by estoppel. By filing the WS defendants prays for dismissal of the said application with costs.

The frame work of CPC enumerates that substantial justice is to be afforded to parties, in some cases opportunities are also given to strangers to the party or third party.

The provisions of Code of Civil Procedure enumerates that for substantial justice suit should be proceeded with necessary parties. By definition necessary parties are those parties whose presence is required to finally adjudicate the matter in hand. Non impleadment of necessary parties are fatal to the suit. In this suit plaintiff who is a relative of defendants has prayed for declaration that plaintiff is one of the co sharer of the schedule property and cancellation of a deed being no. 150616856/2022. By application dated 07/02/2024 plaintiff intends to add one Usha Biswas in this suit as plaintiff no. 2, stating that she is necessary for the suit. But from careful perusal of the application under Order I Rule 10 (2) of CPC it transpires that Usha Biswas has a separate cause of action to proceed against the defendants.

In this regard, this Court needs to put emphasis on legal provision as provided under Order I Rule 1 (a) and (b), which provides the circumstances for the joinder of the plaintiff. The circumstances in which any plaintiff can be join in a suit are, where-

“a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise”.

In this instant case, the transaction between Usha Biswas and defendants have arose out of a separate transaction and there is a separate cause of action between Usha Biswas and principal defendants. Further, the prayer of plaintiff are not in consonance with the prayers of Usha Biswas. If this addition of party is allowed it shall cause changing of nature and character of the suit.

Hence, it is

O R D E R E D

that the application dated 07/02/2024 under Order I Rule 10 (2) of CPC is heard and refused on contest.

Fix **07/07/2025** for hearing of application u/s VI Rule 17 of CPC.

C.J (Jr. Div.)
Bidhannagar.