

Order no.38 dated 08.08.2019

Both parties file hazira. Today is fixed for further hearing of the application under Order 1 Rule 10(2) CPC filed by Nathun Prasad Shaw and Pravati Shaw on 30.08.2018. Heard Ld. Advocate for the applicants and the plaintiff in full. Perused the application, written objection, affidavit-in-reply as well as other materials on the record. Considered.

The applicants have prayed for adding them in this suit as defendants. By an indenture of lease dated 27.04.2004, the plaintiff granted a lease in favour of defendant no.1, who has developed and constructed multistoried building on the said land. By a deed of assignment dated 19.09.2009 the applicants jointly purchased a part of the suit premises from the said defendant no.1, and are in possession thereof. The plaintiff has filed this suit praying for forfeiture of the lease and for recovery of vacant possession. Hence, for protection of the right, title and interest of the applicants, they have prayed for adding them in this suit as defendants claiming themselves to be necessary and proper parties. Ld. Advocate for the applicants has referred to AIR 1989 All 168 and submits that when an interested person is going to be affected by a decree which may be passed in the suit, such person should be added in the interest of justice.

The plaintiff has raised objection against the prayer for adding the applicants as defendants in this suit. Ld. Advocate for the plaintiff has referred to (2018)1 WBLR (SC)1 and 94 CWN 915 and submits that the applicants being sub-lessees are not at all necessary parties in this suit filed by the lessor against the lessee, and that the plaintiff being the dominus litis cannot be compelled to make such

third persons as party to the suit against his wish. Ld. Advocate for the plaintiff also submits that earlier defendant no.1 made such application under Order 1 Rule 10(2) CPC for adding 30 persons as its assignees including the present applicants as defendants in this suit, which was rejected by this court vide order no.21 dated 03.04.2018. Hence, Ld. Advocate for the plaintiff submits that the present application is not maintainable and liable to be rejected.

Once the application filed by defendant no.1 from whom the present applicants have derived title, for addition of its' assignees as defendants in this suit has been rejected by this court on contested hearing, and there is no allegation of any collusion between the plaintiff and defendant no.1, the same prayer made by the present applicants being two of those assignees is not maintainable at this stage, when revisional application being C.O. no.1180 of 2018 is pending before the Hon'ble High Court against the said order of rejection of prayer for addition of those assignees as defendants in this suit. If the present application is decided on merit either way, the same may come in conflict with the decision of the Hon'ble High Court that may be passed in the pending revisional application. Considering the same, the application under Order 1 Rule 10(2) CPC filed by Nathun Prasad Shaw and Pravati Shaw on 30.08.2018 is rejected as not maintainable at this stage.

Fix 25.09.2019 for further evidence of P.w.1.

Typed by,

Civil Judge (Sr. Divn.),
S.C.C., Sealdah.

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