



2021:CHC-OS:388

**IN THE HIGH COURT AT CALCUTTA  
(Ordinary Original Civil Jurisdiction)  
ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**IA No: GA 4 of 2022**

**In CS 96 of 2020**

**Sangita Saha & Anr.**

**Versus**

**Jaya Saha & Anr.**

Mr. Probal Kumar Mukherjee  
Mr. Arnab Mukherjee  
Mr. S. Pyne

... For the plaintiffs/petitioners.

Mr. Shounak Mukhopadhyay  
Ms. Ankita Chowdhury  
Mr. Sayantan Bose

... For the defendant no. 1.

Hearing Concluded On : 12.04.2023

Judgment on : 30.06.2023

**Krishna Rao, J.:**

1. The defendant no.1 has filed the present application for rejection of  
plaint or in the alternative to dismiss the plaint on the ground of non-  
joinder of a necessary party.



2. The plaintiffs have filed Civil Suit No. 96 of 2020 praying for a Decree for partition of joint assets and properties mentioned in the Schedule of the plaint and other prayers connected with the suit property.
3. The defendant No.1 contended that the plaintiff had received a copy of interlocutory application being IA GA No. 2 of 2022 on August 16, 2022 wherein the copy of plaint of CS No. 96 of 2020 was enclosed and on receipt of the said application, the Counsel for the defendant had enquired from the office and the defendant found that the suit is presented on March 30, 2022 but neither the scrutiny of the plaint was completed nor writ of summon is lodged.
4. It is further contended that the plaintiffs have filed the suit for partition and other reliefs but with respect of the suit property, the deceased Kuldeep Saha during his lifetime had made and published his last Will and Testament dated November 26, 2016 whereby the suit scheduled property have been bequeathed to the defendant No.1 by appointing one Sujit Guin as the sole Executor of the said Will.
5. It is further contended that in the plaint it is mentioned that the deceased Kuldeep Saha died intestate but the plaintiff had the knowledge about the last Will and testament of the deceased Kuldeep Saha but the plaintiff had not made Mr. Sujit Guin as a party to the present suit who is a necessary party to the suit.



- 6.** The defendant No.1 further contended that the plaintiff is seeking relief related to the estate of the deceased Kuldeep Saha, having the knowledge about the last Will and Testament wherein Mr. Sujit Guin was appointed as the executor and in the absence of the executor of the Will, issue relating to the estate of the deceased Kuldeep Saha cannot be decided.
- 7.** The defendant no. 1 further contended that the suit filed by the plaintiff does not disclose any cause of action and thus the suit is liable to be rejected.
- 8.** On the other hand, the learned Counsel for the plaintiffs submits that the plaintiff No.1 being the wife and the plaintiff No. 2 being the daughter have filed the present suit claiming partition and other reliefs with respect of the suit property which is left behind by the deceased Kuldeep Saha and thus Sujit Guin cannot be a necessary party.
- 9.** The plaintiffs contended that after the death of the deceased Kuldeep Saha, the defendants have deprived the plaintiffs of their right over the properties left behind by the deceased due to which the plaintiffs are facing difficulties and as such in respect of the share over the property, the plaintiffs have filed the present suit.
- 10.** The plaintiffs further contended that the plaintiffs have requested the defendant to provide a copy of the Will which the defendant herein relied upon but no copy of the Will was provided to the plaintiffs. The



plaintiffs have the knowledge that the deceased Kuldeep Saha has not executed any Will and the Will which the defendants are relying upon is a forged and fabricated one.

- 11.** The plaintiffs further contended that the plaintiffs are claiming the property in which the right, title and interest of plaintiffs have accrued thereby on the death of Kuldeep Saha and thus the plaintiffs have nothing to do with Mr Sujit Guin. The plaintiffs further submits that Sujit Guin had already filed an application for grant of probate and the plaintiffs will contest the said proceeding at the appropriate stage.
- 12.** The plaintiffs further contended that from paragraphs 33 to 36 of the plaint, the plaintiffs have narrated under what circumstances the plaintiffs have filed the present suit and how the cause of action arose for filing of the instant suit and the plaintiffs have categorically stated about the cause of action for filing of the suit.
- 13.** The plaintiffs submits that the plaintiffs have already taken steps for issuance of writ of summons upon the defendants, by filing an application being GA 5 of 2022 and the same is pending for adjudication and as such the allegation made by the defendant No.1 is not correct.
- 14.** Heard the learned counsel for the respective parties, perused the materials on record. It transpires from the record, that the plaintiffs have filed the suit praying for the following reliefs:



*“a) Decree for partition of the joint assets and properties mentioned in the Schedule hereunder in accordance with the share of the parties as stated below:-*

*Plaintiff no. 1 – 1/9*

*Plaintiff no. 2 – 1/9*

*Defendant no.1 – 4/9*

*Defendant no. 2 – 1/3*

*b) The defendants be directed to render all particulars of the joint properties of the parties and render true and faithful accounts and particulars of all their dealings and transactions with or in respect to the same;*

*c) A preliminary decree for partition on declaration of the share of the plaintiffs in respect of the properties, described in the Schedule hereunder; as mentioned above;*

*d) A commissioner of partition be appointed for partitioning by meters and bound the properties, described in the Schedule hereunder and where there is no possibility of partition of the suit property due to the nature of property itself, in that event to dispose of the same to third parties and proportionately divide the consideration amongst the parties;*

*e) Final decree for partition on the basis of the Commissioner’s report for separate allotment and for separate possession to the plaintiffs;*

*f) A decree for permanent injunction restraining the defendants from dealing with or disposing of or encumbering or changing the nature and character of the share of the plaintiffs in respect to the properties described in the Schedule hereunder of taking any steps for mutation of their names with respect to the same;*

*g) A decree for a sum of Rs, 12,70,606/- as pleaded in paragraph 42;*

*h) Decree for direction upon the defendants to render full particulars and true and faithful accounts of the properties and assets forming*



*part of the estate of Late Kuldeep Saha inherited jointly by the plaintiffs and the defendant no,1;*

*i) A decree for such further sums as may be found due and payable by the defendants to the plaintiffs upon taking of accounts;*

*j) Receiver;*

*k) Attachment;*

*l) Injunction*

*m) Costs;*

*n) Such other relief or reliefs which the plaintiffs are entitled to in law and equity.”*

- 15.** The plaintiffs have claimed partition of the suit property on the ground that the plaintiffs have acquired the property by inheritance after the death of Krishna Ranjan Saha and the deceased Kuldeep Saha. It is also found from the record that one Sujit Guin had filed an application for grant of probate of the property on the basis of the Will, alleged to have been executed by the deceased Kuldeep Saha. The defendant No.1 had also filed an application being G.A 3 of 2022 for stay of the present suit on the ground of pendency of probate application. It is settled law that the probate Court is of conscience having limited jurisdiction on the genuinity and the authenticity of the Will and the Probate Court cannot decide the title of the parties and thus this Court had dismissed the said application. In the instant suit, the plaintiffs have prayed for partition and declaration of their share and thus the defendants have not entered appearance in the suit, at this



stage it cannot be said that Mr. Sujit Guin is a necessary party to the suit.

- 16.** It is found from the record in paragraph 33, 34, 35 and 36 the plaintiffs have made the following averments:

*“33. In the meantime, the Defendants threatened the Plaintiffs of dispossession from the Salt Lake property where the plaintiffs presently reside. As such the plaintiffs were constrained to file Title Suit No. 1082 before the Learned Civil Judge (Sr. Division) 2<sup>nd</sup> Court at Barasat praying, inter alia, for declaration and injunction to protect their possession with respect to the premises the plaintiff’s reside. In the said suit pursuant to the application of the plaintiff’s an order of injunction has been passed by the Learned Court on 21<sup>st</sup> December, 2018 restraining the defendants from dispossessing the plaintiff’s from the said property at Salt Lake without due process of law. The defendants have filed their written statement denying the rights of the plaintiffs. A copy of the plaint without the annexures in Title Suit No. 1082 of 2018 and the order of injunction dated 21<sup>st</sup> December 2018 passed by the Learned Civil Judge, Senior Division, 2<sup>nd</sup> Court, Barasat are annexed hereto and marked as Annexure “S” and “T” respectively.*

*34. The defendants by their act and conduct have made it clear that they will not permit amicable partition of the suit schedule properties.*

*35. That for the proper enjoyment of aforesaid properties it is required that the said properties are partitioned by meters and bounds and if there is no possibility of partition of the suit property due to the nature of the property itself, in that event the same may be disposed of a third party and the entire consideration should proportionately divided amongst the parties to the suit. The plaintiffs reserve their right to add further properties in the instant suit as and when the plaintiffs become aware of the same.*

*36. That the plaintiffs are entitled to and claims a decree for partition of the joint assets and*



*movable and immovable properties mentioned in Schedule annexed hereto in accordance with the share of the parties as stated below:-*

*Plaintiff no. 1 - 1/9  
Plaintiff no. 2 - 1/9  
Defendant no. 1 - 4/9  
Defendant no. 2 - 1/3.”*

On conjoint reading of the aforesaid averments, it is clear that the plaintiffs have made specific averments with regard to the cause of action for filing the suit.

17. The plaintiffs in the affidavit have categorically stated that the scrutiny of the plaint has been completed and the plaintiffs have taken proper steps for issuance of writ of summons upon the defendants. The plaintiffs have filed an application being G.A No. 5 of 2022 praying for leave for issuance of writ of summons and the same is pending in a separate proceeding and thus the same issue cannot be decided in the present application.
18. In view of the above, this Court finds that the application filed by the defendant No.1 is misconceived and is liable to be rejected and accordingly is rejected.
19. **G.A No. 4 of 2022** is thus **rejected**.

**(Krishna Rao, J.)**