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02.04.2024

Today is fixed for hearing of the application under order 41 rule 27 read with section 151 of CPC and hearing of two substitution petitions both dt.19.12.2023.

Appellants are represented through their Ld.advocate and on their behalf lawyer's hazira is filed.

One petition is filed for time to file amended copy of memo of appeal. Subsequently the petition is not pressed. Hence rejected.

Record reveals that the matter is proceeding exparte.

The application dt.19.12.2023 for substitution of appellant no.2 is taken up for hearing.

Perused the application. Heard. Considered.

Ld.advocate for the appellants submits that appellant no.2 Enamat Khan expired leaving behind his only son Wasish Khan. There is no other legal heir. As such he is to be substituted in place of appellant no.2 as 2(ka).

Considered.

Considering the nature of the dispute it seems to me that this application is no way barred by limitation. Accordingly, prayer for substitution is allowed on exparte without cost.

The application dt.19.12.2023 for substitution of respondents no.1, 5, 6, 8 & 9 is taken up for hearing.

Perused the case record including the application.

Heard the Ld.advocate for the appellants who submits for substitution of legal heirs of respondents no.1, 5, 6, 8 & 9.

On perusal of the case record it is explicit that Ld.District Judge, Birbhum vide order no.6 dt.03.02.2015 decided that the case against respondents no.5, 6 & 8 is abated. After that appellants filed this application for substitution almost after 08 years without disclosing the date of death of those respondents. It is fact that the original suit is for partition and injunction against the judgement and decree from which the instant appeal is filed. It is needless to mention here that in a suit for partition the position of the litigants are almost same. So, the question of abatement in such a proceeding appears to me to be not appropriate, but this court cannot assuming the revisional jurisdiction alter or modify the order no.6 dt.03.02.2015. Accordingly I am not inclined to dispose of this application dt.19.12.2023 for substitution of legal heirs of respondents no.1, 5, 6, 8 & 9.

Thus, the application dt.19.12.2023 for substitution of legal heirs of respondents no.1, 5, 6, 8 & 9 is kept pending.

This appeal is pending since 2014 and thus, appellants are directed to take appropriate steps according to law as early as possible positively before the next date so fixed.

Fix 21.05.2024 for further order.

Dictated and corrected

A.D.J. 4th Court,Suri

Additional District Judge,
4th Court, Birbhum at Suri
JO Code No.WB00646