

IN THE COURT OF DISTRICT JUDGE, PURBA BARDHAMAN

Present: Shri Sujay Sengupta (WB00650),
District Judge, Purba Bardhaman

Title Appeal No.16 of 2020
(CNR No.WBBD01-000749-2020)

Ganiba Khatun vs. Md. Zikria & 2 Ors.

Order No.32 dated 21.02.2024.

Both sides file hajira.

Written objections against two applications of the appellants dated 12.12.2023 are filed today.

The application filed by the appellants dated 12.12.2023 for a direction upon the respondents to take steps under Order 22 Rule 4 of the C.P.C. is taken up for hearing and order at first.

Heard Learned Advocates.

It is submitted that the original appellant Ganiba Khatun died but the plaintiffs/respondents did not take any steps on death of Ganiba Khatun who was the defendant no.1 in Title Suit No.46 of 2015. By this, it is submitted that unless such defect is cured by the plaintiffs/respondents there should be a procedural defect and cannot be cured in future.

Learned Advocate for the appellants submitted that Title Suit No.46 of 2015 was filed against Ganiba Khatun, Samser Ali, and Rahima Khatun as defendants and said Samser Ali and Rahima Khatun are the son and daughter of the deceased Ganiba Khatun and therefore, there is no abatement and right to sue subsists against the defendants no.2 and 3 who are already on record.

Considered and on basis of such facts and circumstances and relying upon such submissions made by both sides I am of the view that the present application has no merits and accordingly, the same is rejected however, expunge the name of Ganiba Khatun from the cause title and note it accordingly.

Later:

Another application filed on 12.12.2023 by the appellants under Section 151 of the C.P.C. is taken up for hearing and order.

Heard both sides.

It is the prayer of the appellants that an opportunity be given to the appellants/defendants to cross-examine the P.W.1 which was deferred on 18.04.2018. It is submitted by the Learned Advocate that the original appellant died. It is evident that one prayer of the appellants under Order 41 Rule 27 of the C.P.C. was passed by this Court on 29.09.223 whereby an opportunity was given to the appellants/defendants to adduce evidence from their side. Records speak that D.W.1 was examined and cross-examined on 13.12.2023 and 14.12.2023 accordingly. The Learned Advocate appearing on behalf of the respondents drew my attention to the order sheets of the L.C.R. wherefrom it is evident that evidence of P.W.1 was going on from 28.03.2018 to 05.07.2018. It is clearly evident that on 18.04.2018, P.W.1 was cross-examined in part and on 10.05.2018 it was adjourned on prayer of the defendant. It is further evident that on 19.06.2018, once again the defendant/appellant prayed for time and the case was adjourned. The order dated 05.07.2018 speaks that the defendants failed to comply the earlier direction regarding

payment of cost and the Court waited up to 1.30 p.m. and lastly closed the evidence of P.W.1 on that day. The plea taken for the first time was not mentioned in the earlier application and an order was passed under Order 41 Rule 27 of the C.P.C. I am of the clear opinion that the appellants by this or that intend to procrastinate the proceedings. However, in the interest of justice and for complete adjudication of the matter, the prayer is allowed at this belated stage subject to payment of cost of Rs.3,000/-.

To 24.04.2024 for payment of cost and cross-examination of P.W.1 positively.

Dictated & corrected by me

Sd/-

District Judge,
Purba Bardhaman

Sd/-

District Judge,
Purba Bardhaman