

T.S. 1895/05 CNR – WBCC01-003246-2005  
Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 121  
22.08.23

Today is fixed for hearing the u/s 151 CPC filed by defendant no 5 together with the application filed by the plaintiff u/o 22 Rule 4 CPC as well as for office report regarding sufficiency of court fees upon the counter claim filed by the defendant no 5 .

Plaintiff as well as defendant nos 1, 2 ad 5 file separate haziras. Perused the office report regarding court fees paid on the counter claim, which appears to be correct. The plaintiff does not raise any objection against acceptance of W/S with counter claim of defendant no 5. Accordingly the W/S with counter claim of defendant no 5 is accepted.

It appears that the plaintiffs have already filed W/S against the counter claim of the defendant no 5. The said W/S also stands accepted.

Now the application of the plaintiffs dtd 6.6.23 u/o 22 Rule 4 read with section 151 CPC as well as the application of the defendant no 5 dtd 6.6.23 u/s 151 CPC are taken up for consideration. Heard the Ld. Advocates for all the sides. Perused the applications.

So far as the application for the plaintiffs u/o 22 Rule 4 read with section 151 CPC is concerned, by the same the plaintiffs have prayed for passing necessary order for substitution of the heir and legal representative of the defendant no 4 in the cause title of the plaint on the ground that the said defendant no 4 is dead and right to sue against her heir subsists. On the other hand, the defendant no 5, through his application u/s 151 CPC, has prayed for passing necessary order for deleting the name of defendant no 4 from the cause title of the plaint on the ground that she died issueless.

Though both the sides argued much in respect of the question as to whether right to sue against the husband of the deceased defendant no 4 really subsists or not, I am of the view that at this stage of this suit the said question cannot be answered properly unless all the material evidence in respect of the disputes involved between the parties is on record. That apart, when it is the prayer of the plaintiff to have the heir and legal representatives of deceased defendant no 4 to be on record, the defendants have practically nothing to say in this regard as it is upon the plaintiff to decide as to against whom they will proceed for the reliefs claimed by them in this suit. In the above perspective when the applicaiton for substitution appears to have been filed in time after the death of defendant no 4 on 26.4.23, the same is entitled to succeed and as a consequence, the prayer of the defendant no 5 u/s 151 CPC is liable to be rejected.

Hence it is

Ordered

that the applicaiton of the plaintiffs dtd 6.6.23 u/o 22 Rule 4 read wih section 151 CPC is hereby allowed while the application for the defendant no 5 of same date u/s 151 CPC stands rejected.

Let the person along with his particulars as mentioned in the prayer portion of the application u/o 22 Rule 4 read with section 151 CPC be substituted in place of the deceased defendant no 4 in the cause title of the plaint. Note and register accordingly.

Plaintiffs are directed to file amended copy of plaint after serving copy thereof upon the defendant as well as to take steps upon the substituted defendant at once fixing 29.8.23 for S/R and A/D.

D/C by me

Judge 2<sup>nd</sup> Bench

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