

Title Appeal 135/2012

CIS 256/2014

CNR noWBHG01-001786-2014

Order no.75 dated 17.05.2024

Today is fixed for hearing the petition u/o 1 Rule 10(2) CPC filed by the appellant on affidavit. Copy of the petition is found to have been served upon the respondent party.

Moving the petition, learned Advocate for the appellants submits that the proforma respondent no.4 died on 26.01.2024 leaving behind her two sons and two daughters as per schedule attached. Being a partition suit, question of abatement does not arise.

None found present on behalf of the respondent to raise any objection, when the record was called.

I have straightaway gone to the prayer portion of the plaint and find that the plaintiff has sought for declaration of share in terms of preliminary decree. Being a suit for partition, though the petition is filed at a belated stage it is inconsequential to affect the rights of the parties, more particularly the legal heirs of the deceased proforma respondent no.4. Being a partition suit, suit shall not abate even on the death of the deceased proforma defendant no.4.

Accordingly, the petition U/O 1 Rule 10(2) CPC is considered and **allowed**. Appellants are directed to substitute the legal heirs in place of the deceased proforma defendant no.4 namely Anwara Bibi.

Aforesaid petition now stands disposed of.

To 02.07.2024 for filing amended cause title of the appeal.

Dictd. & Corrd. by me.

Sd/-

A.D.J, 1st Court,
Hooghly.

Sd/-

Additional District Judge, 1st Court,
Hooghly at Chinsurah.
J.O Code no.W.B 00753