

T.A. 25/2016 (R-90 of 2016)

Order No. 38 dt. 16-11-2023.

Both parties are present by filing their respective haziras.

Ld. Advocate for the appellant has also filed photo copy of the Death Certificate of one Paresh Chandra Pal accompanied by a Cremation/Burial Certificate dt. 23-12-2020 issued by Executive Officer, Nabadwip Municipality in respect of one Asit Ranjan Pal.

Record reveals that date is fixed for hearing of the petitions dt. 24-12-2020 filed at the instance of the appellant/petitioner under Order 22 Rule 3 C.P.C. seeking substitution of the legal heirs of the deceased parties to this appeal.

Perused both the petitions as aforesaid, heard the Ld. Advocate for the parties.

Considered.

On perusal of the petitions as aforesaid and having heard Ld. Advocate for the appellant/petitioner, it appears that the Appellant No. 1 namely, Asit Ranjan Pal died on 28-03-2020 leaving behind him 1. Utpal Kumar Pal, 2. Milan Prova Pal and 3. Tapasi Ghosh as his legal heirs, who are required to be substituted in his place as Appellant No. 1(a), 1(b) & 1(c) respectively. In support of his such submission he has relied upon the photo copy of the Cremation/Burial Certificate dt. 23-12-2020 certifying that Asit Ranjan Pal died on 28-03-2020.

Another petition under Order 22 Rule 4 C.P.C. is owing to substitute the legal heirs of the Respondent No. 1 namely, Roy Mohan Roy who died on 01-02-2020 corresponding to 17th Magh 1426 B.S. leaving behind him 1. Nanda Dulal Roy, 2. Brajo Gopal Roy, 3. Navendu Roy, 4. Upendu Roy, 5. Smt. Pinaki Dey, 6. Smt. Jhanti Dey and 7. Smt. Buchi Saha as his only legal heirs. Although no Death Certificate has been filed in respect of the same, yet the same having admitted by the Ld. Advocate for the respondent, can be accepted.

Both the petitions are duly supported by an affidavit and were filed on 24th December, 2020.

Ld. Advocate for the appellant in this regard has taken the resort to the Covid Pandaemic Period which according to him prevented him from filing the petition within the due course of time and in terms of the order of the Hon'ble Supreme Court of India prayed for allowing the instant petitions accordingly.

Said submission cannot be rejected in view of the Hon'ble Supreme Court's decision.

On the other hand, so far as the date of death of the Respondant No. 1 on 01-02-2020 as has been claimed by the Ld. Advocate for the appellant/petitioner, the same has been objected to by the Ld. Advocate for the respondent on the ground that he passed away in the year 2018. But she also admitted that the instant suit and appeal is for partition.

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Order No. 38 dt. 16-11-2023 (Contd....).

In this regard Ld. Advocate for the appellant submitted that he did not have information of the death of the Respondent No. 1 before hand otherwise, he would have definitely taken steps to substitute the legal heirs of Respondant No. 1.

So, for the sake of rendering justice to the parties, I am of the view that both the petitions should be allowed.

Hence, it is

ORDERED

that both the petitions filed at the instance of the appellant/petitioner on 24-12-2020 under Order 22 Rule 3 C.P.C. are hereby allowed on contest, without making any order as to cost.

Let the legal heirs of the Appellant No. 1 and Respondent No. 1 be substituted in terms of the instant petition and register the same accordingly.

Appellant/petitioner is directed to take steps upon the substituted respondents.

Requisites be filed today.

To 10-01-2024 for S.R. and A.D.

Dictated and corrected by me
Sd/- Subhankar Sen.
District Judge, Nadia

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District Judge, Nadia