

WBND070001202016



Title Suit 85/2016
Registration No 332/2016
Present : Rajib Sarkar
J.O. Code- WB01509

Sukla Sarkar @ Das Vs. Netai Sarkar

Order no 37

Dated 16.04.2024

Today is fixed for hearing of petition U/O 22 R 3 of CPC.

Both the parties have present by filing their respective lawyer's hazira.

The instant petition has been filed for substituting the sole deceased plaintiff with her legal heirs.

The petition is well within time.

Ld. Advocate on behalf of the defendant has raised objection on the ground that in the cause title as well as the body of the plaint the defendant of the present suit has been shown to be the husband of the deceased plaintiff. But in the instant petition he has not been mentioned as a legal heir. Moreover, there is no mention regarding the present status of the actual husband of the plaintiff.

Per contra, Ld. Advocate on behalf of the plaintiff draws the attention of this Court to the WS wherein the marital tie between the plaintiff and the defendant has been outright denied. As such, the Ld. Advocate on behalf of the plaintiff accepts such proposition of the WS and does not incorporate the defendant as a legal heir of the plaintiff.

This Court is of the opinion that where the defendant himself has denied his matrimonial relationship with the plaintiff he can not be claiming as a legal heir of the plaintiff. Now, if there is any other actual husband of the plaintiff who is being left out, the plaintiffs suit shall suffer for defect of parties. At present the instant petition is well within time and therefore is liable to be allowed.

Hence it is,

ORDERED

that the instant petition be and the same is allowed on contest without any order as to cost.

Let the instant petitioners be substituted as 1a and 1b in place of the deceased plaintiff.

Petitioners are directed to file the substituted cause title in the mean time.

Fix 18.07.2024 for further examination of Dw1.

Dictated & corrected by me,

Sd/- Rajib Sarkar
Civil Judge(Junior Division),
Nabadwip, Nadia