

EJECTMENT SUIT NO. 26 OF 2015

ORDER NO. 52 DATED 18.06.2019

Defendant files hazira.

Ld. Counsels for both sides are present on call.

One adjournment application filed by the plaintiff is Not Pressed.

The application of the plaintiff under Or.1 r.10(2) read with Sec.151 C.P.C. is taken up for hearing.

Plaintiff, by filing the instant application, asserts that Sri Sri Sridhar Jew was represented by Samir Kumar Mukherjee and Ashok Kumar Mukherjee but now one of the representatives of the deity expired on 28.09.2018 and prays for continuation of the suit by the surviving sebaite, Ashok Kumar Mukherjee by deletion/expunction of the name of the deceased representative.

Other side, as usual, submitted that the suit property is a Trust Property and need to be guided by a Trust Deed. The suit has already abated on the death of one of the representatives and prays for dismissal of the application.

Heard both sides. Perused the application as well as the materials available on record.

The suit has been initiated by Sri Sri Sridhar Jew through its Sebaite/Trustee and beneficiary Sri Samir Kumar Mukherjee and Ashok Kumar Mukherjee, both sons of Tulsipada Mukherjee. It is the settled proposition of law that if there are two Trustees and one of them expires, the other is free to proceed on with the suit in accordance with law and none can prevent him in proceeding with the suit and deleting the name of deceased Trustee. Moreover, it is the plaintiff who is to prove its case to get the decree and if he cannot do so, defendant is bound how to get the benefit. It is too early stage to call for the plaintiff and scrutinize the Trust Deed which the plaintiff will have the liberty to produce it at the time of final Trial and the defendant will get the opportunity to controvert the same. If the plaintiff cannot do so, it will only be at his own peril.

At this juncture, when the document has not been exhibited, court need not compel the plaintiff to produce the same. Be that as it may, let the name of the deceased

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Trustee/Sebait/Manager/Beneficiary, Late Samir Kumar Mukherjee be expunged from the cause title of the plaint and the suit be proceeded accordingly by the other beneficiary, Sri Ashok Kumar Mukherjee.

B.C.II to make note in the relevant register.

The instant application under Or.1 R.10(2) C.P.C. filed by the plaintiff dated 19.11.2018 is thus allowed on contest but without any order as to cost.

Fix 18.07.2019 for P. Hearing of the suit.

DICTATED AND CORRECTED BY ME

JUDGE

JUDGE
[5TH BENCH]