

Ejectment Suit 169 of 2022.
[CNR No WBPS 01 000285 2022]
Before - Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-18.
13-11-2024.

Today is fixed for hearing of petition u/o- 22 Rule 3 read with Section 151 of C.P Code filed by the plaintiff dt 17-08-2024.

Both parties file haziras. On call, parties are found present. The matter is taken up for hearing.

Heard both sides.

Perused the petition and materials on record.

Considered.

Ld. Advocate for the plaintiff submitted that during the pendency of the suit, plaintiff no-2 Mita Saha died on 23-02-2023 leaving behind his son and daughter as legal heirs and successors who are required to be substituted in her place. The husband of plaintiff no-2 predeceased her. Therefore, by filing the instant petition, the plaintiffs prayed for their substitution in place of deceased plaintiff no-2.

In support of their contentions, one Xerox copy of death certificate of the plaintiff no-2 is annexed with the petition.

Although no Written Objection has been filed by the defendant against the instant petition of the plaintiffs however at the time of hearing Ld. Advocate for the defendant raised strong objection against the petition and submitted that in the original petition filed u/o-22 Rule 3 read with section 151 of C.P. C by the plaintiff dt 13-04-2023 , the address of the legal heirs of the deceased plaintiff no-2 has been mentioned in the town of "Haora" but in the present application that has been changed to "Howrah" without taking leave of the Court. Further from the face of the petition, it is cannot be ascertained whether the legal representatives of deceased plaintiff no-2, whom the plaintiffs are intending to substitute are "Sue Juris" or not. He submitted that the petition is not entertainable on that score.

In reply, Ld. Advocate for the plaintiff submitted that he is filing an affidavit today itself to cure these anomalies. It is further submitted that the plaintiffs are suffering since long due to non progress of the suit. He prayed for accepting the affidavit and allowing the petition.

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Ld. Advocate for the defendant raised no objection.

Heard submissions from the parties.

At this stage, an affidavit of Anirban Saha, petitioner no-1 has been filed affirming that due to typographical error, the address of the petitioners have been wrongly mentioned as "Haora" instead of "Howrah" and both the petitioners no 1 & 2 are major and Sue Juris.

Copy served.

Perused the petition, affidavit filed by the petitioners and materials on record.

Also perused the Xerox copy of death certificate is annexed with the petition which reveals that the plaintiff no-2 Mita Saha died on 23-02-2023.

The defendant did not dispute the factum of the death of plaintiff no-2.

It further reveals from the order sheet that original petition for substitution was filed by the petitioners on 13-04-2024 and the instant petition is in continuation of the same. So, considering such factual aspect, the petition has been filed within the prescribed period of limitation. Unless, the instant petition is allowed, the petitioners will suffer loss and injury and the plaintiffs/petitioners shall not be able to proceed with the suit.

Therefore, this Court finds that for larger interest of justice, the petition filed by the petitioners/ legal representatives of plaintiff no-2 may be allowed.

Hence,

it is,

Ordered

that the petition of the legal representative of the plaintiff no-2 filed u/o-22 Rule 3 read with Section 151 of C.P Code dated 17-08-2024 is hereby allowed on contest.

Let the name of deceased plaintiff no-2 Mita Saha be deleted from the Cause Title of the plaint and in her place, the names of the persons as mentioned in the schedule of the instant application namely Anirban Saha being the son and Anindita Saha being daughter of the deceased be substituted as plaintiff no-2(a), 2(b) & 1(c) respectively along-with their particulars.

Amend the plaint accordingly a. Note the same in register. Plaintiff is directed to file amended plaint by the next date. Make necessary data entries in the CIS system also.

Fix. (**17-12-2024**) for filing amended plaint by the plaintiff. Plaintiff is further directed to serve copy of the amended plaint upon the defendant.

Dictated & corrected by me:-

Chief Judge.

J.O .Code:- WB 01244.

