

Ejectment Suit No. 211 of 2023
WBPS01-000452-2023

Order No. 12

Date: 09.12.2024

Today is fixed for hearing of the petition under order-1, Rule-10 (2) r/w Section 151 of CPC filed by the plaintiff dated 13.06.2021, written objection, if any, in the meantime.

Both sides filed hazira through their Ld. Advocates.

Heard both sides.

The plaintiff submitted that the instant suit has been filed against two defendants namely Paresh Shah and Rashiklal Shah who are the joint tenants in respect of the suit property. It was submitted that when the defendant filed applications u/s 7(1) & 7(2) of the WBPT Act, 1997, it came to knowledge of the plaintiff that defendant no. 2 had already expired prior to the institution of the suit.

In view of the above, the plaintiff prays that the name of the defendant no. 2 be deleted from the cause title of the plaint and suit be proceeded accordingly.

He further submitted that the mistake occurred is bonafide and he had no knowledge of the death of the defendant no. 2.

On the other hand, the defendant did not submit any written objection neither raised any verbal objection.

In support of his contention the plaintiff relied upon the decision of the Hon'ble Supreme Court of India in **AIR 1993 SUPREME COURT 2324** in the case of **Karuppaswamy and Others -vs- C. Ramamurthy** wherein it was held that Section 21(1) of the Limitation Act, 1963 can be invoked on the Court being satisfied that the motion to include the right defendant by substitution or addition was just and proper, when the mistake of impleading a dead defendant in the suit having occurred in good faith.

In the instant case, the Ld. Lawyer for the plaintiff submitted that the defendant no. 2 had expired prior to the institution of the suit and he had no knowledge of the same. He learnt about the death of the defendant no. 2 when the defendant no. 1 filed applications u/s 7(1) & 7(2) of the WBPT Act, 1997 before the Ld. Court. His prayer is to struck out the name of the defendant no. 2 from the cause title of the plaint. One of the joint-tenants is already on record as defendant no. 1 and no such prayer for further impleading of legal representatives has been made.

In view of the above, and on being satisfied that the mistake occurred was bonafide, the prayer of the plaintiff is allowed on contest.

The defendant no. 2 is struck out from cause title of the plaint.

Plaintiff to file the amended plaint.

BC-I to do needful.

Fixing **12.02.2024** for filing amended plaint.

Dictated and corrected by me:

Judge

**Smt. Glady Bomjan
(J.O. Code: 01039)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta**