

ORDER NO.111 dt.21/01/23

Today is the date fixed for hearing of the petition u/s 151 CPC filed by the defendant on 21/09/21. The plaintiff filed written objection.

It is contended by the defendant in the petition under reference that this court has no jurisdiction to try this suit. However, today the defendant filed an adjournment petition on the ground that the defendant has preferred revisional application against the order no.109 dt.16/11/22 passed in connection with the plaintiff's petition u/o 1 rule 10 (2) CPC allowing the plaintiff's prayer for transposition of the proforma defendant in the category of the plaintiff.

The defendant in the said application raised strong objection stating inter alia that the right to sue no more survives after the death of the original plaintiff and accordingly the suit should be dismissed.

Against the said order the defendant preferred revisional application vide C.O no. 42 of 2023 and today prayed for adjournment on the ground that the said revisional application has not yet been listed in the Hon'ble Court.

Ld. Advocate appearing on behalf of the plaintiff raised strong objection in adjourning the suit stating inter alia that there is a direction from the Hon'ble Court to dispose of the suit as early as possible.

Perused the direction of the Hon'ble Court in C.O no.2864 of 2017 dt.05/09/17 and communicated to this Court on 23/11/17 wherein the Hon'ble Court has been pleased to direct to dispose of this suit as expeditiously as the business of the court would permit and without granting any adjournment to the parties.

*In compliance of the order of the Hon'ble Court the evidence of the parties of the suit has already been completed and at the stage of argument the sole plaintiff died and for the purpose of substitution one petition filed on behalf of the plaintiff u/o 1 rule 10 (2) CPC praying for transposition of the proforma defendant in the category of the plaintiff which has been allowed vide order no. 109 dt.16/11/22 against which the defendant preferred revisional application being C.O. No. 42 of 2023.*

*At this court if the Hon'ble Court pleased to allow the revisional application then this suit will no more exist. So the opinion of the Hon'ble Court is very much essential for further proceedings of this suit and accordingly an opportunity should be given to the defendant with a direction also to the defendant to get the order from the Hon'ble Court as early as possible.*

*Accordingly prayer for adjournment of the defendant is hereby allowed.*

*To 28/02/23 for hearing of the petition u/s 151 CPC dt.21/09/21 and the defendant is hereby directed to bring order from the Hon'ble Court in the meantime.*

*D/C by me*

*Judge, 4<sup>th</sup> Bench*

*Judge*