

Order no.10.

Dated 13.01.2025.

Today is fixed for hearing of the petition U/O 22 Rule 4 of CPC.

Appellant files hazira.

Thereafter, the petition dated 20.11.24 is taken up for hearing, wherein the petitioner has stated that during the pendency of this instant Misc, Appeal the respondent no.1 died on 22.08.24 leading behind the legal heirs as mentioned in the schedule of the said petition and prays for substitution.

Perused the W.O, wherein the respondent no.2 has stated he is the Karta of the Hindu Undivided Property and the names of substituted respondents have not property nos.(a), (b) and (e) mentioned in the instant petition. Moreover, his father Ashok Kumar Raidani was the Karta of the Hindu Undivided Family and T.S 218 of 1987 before. Ld. Munsif 2nd Court, Sealdah and T.A 62/1995 arose against the said Title Suit before Ld. Ld. SCC, Court was both decreed in favour of his father.

Accordingly, the respondent no.2 stated that all legal heirs of the respondent no.1 his mother should not be brought on record.

Heard both sides at length.

In course of his Argument, Respondent no.2 has relied upon the following decisions as reported in Writ Petition No.2004 of 2005 of Hon'ble Bombay High Court and Civil Appeal No.10215 of 2011 of Hon'ble Apex Court.

Considered the submission of both sides.

It is pertinent to point out that according to the provision of Order XXII Rule 4(1) of CPC where one of two or more defendant dies and the right to sue survives, the court shall cause the legal representatives of the deceased defendant to be made a party and shall proceed with the case.

In view of the statutory mandate as the Appeal is a continuation of the suit, the petition dated 20.11.24 filed U/O 22 Rule 4 of CPC is hereby allowed.

And the citations as referred by the respondent no.2 is at variance with this case, it is not applicable.

Fix 20.02.25 for hearing of the petition for maintainability of the appeal.

The petitioner to file Revised Memorandum of Appeal according to schedule as mentioned in their application incorporating the correct names of the substituted respondent nos.1(a), (b) and (e) as stated by the respondent no.2 in his petition.

D/c by me,

ADJ, FTC-II, Sealdah.

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