

**T.A.30 of 19**

**Order No :23**  
**dated :06/03/2024**

Today's date is fixed for S.R. & A/D and hearing of substitution petition dated 19.01.24. One application under Order V Rule 9(5) C.P.C. comes up from the side of the appellant praying for considering the summons/notice to have been served upon respondent Nos.3,4,6,7,8,10 & 11.

Ld. Advocate for the appellant is present. Hazira filed on behalf of respondent No.1.

Record is taken up for hearing of all the applications mentioned herein above.

None appeared on behalf of respondent No.1.

Heard Ld. Advocate for the appellant.

So far as the substitution petition dated 19.01.24 is concerned, it is contended that the respondent No.2 died on 19.11.23 leaving behind his wife and children as his legal heirs and as such all the legal heirs of the deceased respondent No.2 be required to be brought on record by way of substitution. In another application dated 19.01.24 Ld. Advocate for the appellant contended that the respondent.5 has died unmarried leaving behind the respondent Nos. 1 to 4 (brothers) as his legal heirs and as such the appellant should be exempted from taking any steps as against the deceased respondent No..5. On the other hand so far as the application filed on this day under Order V Rule 9(5) C.P.C. is concerned it is contended that summons has been issued on the proper addresses of the respondent Nos.3,4,6,7,8,10 and 11 by registered post with A/D but no acknowledge card returned back to the court and as such the summons/notices sent on those respondents should be deemed to have been served.

So far as the application for substitution of deceased respondent Nos.2 is concerned the application in that behalf appear to have been filed within the statutory period of limitation and as such this Court finds no impediment in allowing the said application. At the same time the respondent No.5 having died unmarried leaving behind respondent Nos.1 to 4 as his legal heirs (brothers:), there is no question of substitution and as such the purpose will be served by expunging the name of the deceased respondent N.5 from the cause tile of Memo of Appeal as well as plaint.

So far as the application under Order V Rule 9(5) C.P.C. is concerned the record reveals that registered summons were sent on respondent Nos.3,4,6,7,8,10 & 11 and postal track report shows six registered letters were delivered to the addressees whereas the rest three were refused . In any case however the Court is inclined to hold such remarks on he postal tract report to be proof due service of the summons and as such the Court is inclined to declare the summons sent to the respondent No.s.3, 4, , 6 , 7 8, 10 & 11 to have been duly served.

Hence,

it is order

That all three applications filed by the appellant under consideration are allowed and accordingly disposed of. Let the legal heirs of deceased respondent No.2 namely Megnath as described in the substitution petition be brought on record by way of substitution as respondent No.2 (series). Let the name of the respondent No.5 namely Sundar Das be exempted from the cause title of Memo of Appeal.

Let the appeal be heard ex parte against respondent Nos.3, 4, 6, 7, 8,10 and 11.

The appellant is directed to file amended Memo of Appeal and take steps upon the substitution respondent No.2 (series).

Call for the L.C.R. from the Court of Ld. Civil Judge (Jr. Divn.) 2nd Addl. Court, Diamond Harbour of Title Suit No.37 of 2016, CIS 1051 of 2016.

Fix 15.04.24 for filing amended memo of appeal and S.R. & A/D upon respondent No.2 (series).

Let a copy of this order be sent to Ld. Civil Judge (Jr. Divn.) 2<sup>nd</sup> Addl. Court, Diamond Harbour for information and taking necessary action.

Addl. Dist. Judge,  
FTC II, Diamond Harbour