

CIS No. 17/2008
Misc Appeal- 17/2008
CNR NO.WBSP 15-00038-2008
J.O.Code- WB00859

Order No. 96

Dated: 01.02.2025

Both the parties are present through their respective Ld. Advocates.

Three applications were fixed for hearing today, out of which two applications were filed by the appellant on 09.01.2018 and one application has been filed on behalf of the legal heirs of deceased respondent no. 1 on 26.09.2024.

At first the petition dated 09.01.2018 filed by the appellant praying for an order exempting him for substituting the legal heirs of respondent no. 2 is taken up for hearing.

It appears from the record that this Court by order no. 88 dated 20.02.2024 directed the appellant to file copy of the deed by which respondent no. 2 Kunjabihari Jana transferred his share in favour of the appellant. In compliance to the said order the appellant has filed certified copy of the sale deed bearing no. 373/2009 dated 30.10.2008. From the said deed it appears that said Kunjabihari Jana transferred his share in the suit property in favour of the appellant herein.

In such circumstances, the said petition dated 09.01.2018 filed by the appellant is allowed and the appellant is exempted from substituting the legal heirs of respondent no. 2 Kunjabihari Jana. The name of Kunjabihar Jana be struck off from the Memo of Appeal.

Now another petition dated 09.01.2018 filed by the appellant under order 22 Rule 10 C.P.C. is taken up for hearing.

It appears from the record that by order no. 88 dated 20.02.2024 this Court directed the appellant to file copy of the deed between Banabihari Jana, since deceased and his four sons. However, the appellant has failed to file copy of the said deed. In the absence of said deed on record, this Court is not a position to allow the said petition Order 22 Rule 10 C.P.C. filed by the appellant. Accordingly, the said petition dated 09.01.2018 filed by the appellant under Order 22 Rule 10 C.P.C. is rejected.

Now the petition dated 26.09.2024 under Order 1 Rule 10(2) C.P.C. filed by the legal heirs of Banabihari Jana, since deceased, the original respondent no. 1 of this appeal, is taken up for hearing. The Ld. Advocate appearing on behalf of the appellant submitted that he has no objection if said petition is allowed.

In the said petition it has been stated that the original respondent no. 1 namely Banabihari Jana died on 08.06.2012 leaving behind his four sons and two daughters as his legal heirs and representative. The said legal heirs and representatives approached this Court and have filed the instant application under consideration praying for adding them as parties in this appeal. The said legal heirs and representatives of Late Banabihari Jana has already substituted their names before the Ld. Trial Court in Title Suit No. 315 of 2007.

Thus, this Court is of the opinion that there is no legal bar to allow the said petition under Order 1 Rule 10(2) dated 26.11.202 and the same is allowed on consent.

Let the legal heirs of deceased respondent no. 1 Banabihari Jana be added as respondent nos. 1Ka to 1Gha. The appellant is directed to file amended Memo of Appeal in terms of this order.

Fix 07.03.2025 for filing amended Memo of appeal and hearing of this appeal.

D/C by me,

Sd/- A. Chattopadhyay
A.D.J. 2nd Court, Kakdwip
South 24 Parganas

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