

**CIS No. 17/2008**  
**Misc Appeal- 17/2008**  
**CNR No.WBSP 15-000038-2008**  
**J.O.Code- WB00859**

**Order No. 88**

**Dated: 20.02.2024**

Today has been fixed for hearing of the two petitions, both dated 09.01.2018, filed on behalf of the appellant.

The Ld. Advocate of the appellant is present by filling hazira.

No step has been taken on behalf of any of the respondent of this appeal.

On perusal of the record it appears that the appellant filed two applications on 09.01.2018. One praying for an order exempting them from substituting the legal heirs of proforma respondent no. 2 namely Kunjabihari Jana. The other application has been filed under the provision of order XXII Rule 10 C.P.C.

At first the petition praying for exemption from substituting the legal heirs of deceased respondent no. 2 is taken up for hearing.

Heard the Ld. Advocate of the appellant.

Perused the said petition and the case record.

Considered.

In the said petition the appellant has contended that respondent no. 2 Kunjabihari Jana before his death has transferred his share in favour of the appellant. Accordingly he has prayed for exemption from substituting the legal heirs of deceased respondent no. 2. In the petition, the appellant has stated that respondent no. 1, who is the plaintiff in the Ld. Trial Court below, filed an application praying for a similar relief. The appellant has filed the certified copy of the said petition filed before the Ld. Trial Court .

According to this Court the appellant ought to have filed the said deed by which late Kunjabihari Jana allegedly transferred his share in the suit property in his favour. In the absence of the said document, this Court is not in a position to consider the said petition filed by the appellant.

The appellant is directed to file certified copy of deed no. 373 dated 30.12.2008 on the next day of hearing.

Now the petition under Order XXII Rule 10 C.P.C. is taken up for hearing.

In the said petition the appellant has stated that respondent no. 1 of this case namely Banabihari Jana has died. Prior to his death he has transferred his share in the suit property in favour of his four sons. Accordingly, only the said four sons of deceased respondent Banabihari Jana should be made parties in this appeal and not his other legal heirs.

In support of his aforesaid contention the appellant has filed the certified copy of a petition filed by the legal heirs of Banabihari Jana after his death before the Ld. Trial Court below. However, in the said petition it has been stated that, as the process of registration of the alleged deed of Sale executed by Banabihari Jana in favour of his four sons has not yet been completed, all the legal heirs of Banabihari Jana are required to be substituted.

In such circumstances the appellant is directed to file copy of the deed between Banabihari Jana, since deceased and his four sons.

Thus the petition under Order XXII Rule 10 C.P.C can not be disposed of today.

Fix 16.04.2024 for filing of the documents by the appellant in view of this order and further hearing of the two petitions dated 09.01.2018.

D/C by me,

A.S.J. 2<sup>nd</sup> Court, Kakdwip  
South 24 Parganas

A.S.J. 2<sup>nd</sup> Court, Kakdwip  
South 24 Parganas