

T.S. 181 OF 2022

Reg. 97 of 2021

JO Code: 000823

Order No. 12

Date: 04.04.23

Today is fixed for hearing on the point of maintainability.

Heard the ld advocate on behalf of the defendant who submits that the suit is barred by the provisions of Order 2 R. 2 of CPC because the plaintiff had previously filed the suit and had withdrawn the same suit and cost was imposed but the plaintiff without paying the said cost has filed this suit. he further submits that the defendant no. 3 has already expired and the plaintiff has filed this suit against a dead person.

Per contra the ld advocate on behalf of the plaintiff submits that the suit was withdrawn with liberty to sue afresh subject to cost of Rs. 400/- and that the plaintiff is ready with the money and had made all attempts to pay the same but because of some administrative difficulties as to the head under which the same has to be deposited in the treasury the plaintiff could not deposit the same. He further submits that legal heirs of defendant no. 3 are already on record hence, the death of defendant no. 3 will not effect the suit.

Heard both sides.

Considered.

Perused the order of the Ld Civil Judge (Jr. Division), Kakdwip.

On perusal of the order dated 31.07.2021 it appears that the plaintiff was permitted to withdraw the suit "with liberty to sue afresh subject to cost of Rs. 400/-".

The ld advocate on behalf of the defendant is questioned whether he is willing to accept the cost in open court to which he refuses stating that since he wants to challenge this order so he is not willing to accept the cost and since the ld advocate on behalf of the plaintiff has already submitted that because of the confusion as to the treasury head the cost cannot be deposited in the treasury.

In the given premises the plaintiff is directed to pay the cost to the Chairperson, SDLSA, Kakdwip.

In view of my above discussion I do hold that the suit is prima facie maintainable. Hence, the petition filed by the defendant is considered and rejected.

Later:

The application u/o. 1 r. 10(2) of CPC dated 02.02.23 is taken up for hearing.

By the said application the plaintiff wants to strike out the name of the defendant no. 3 as she expired prior to filing of this suit and her legal heirs are already on record.

Prayer is considered and allowed.

Strike out the name of defendant no. 3 from the cause title of the plaint. Note in the register.

Plaintiff is directed to file a fresh plaint.

To 19.04.2023 for compiled plaint and injunction hearing.

D/C

Sd/- Sushmita Gayen
ACJM-cum-CJSD, Kakdwip

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The record is put up on the strength of a put up petition filed by the defendant no. 7.

The Id advocate on behalf of the defendant no. 7 submits that since there was no specific order to repair the attached structure also so, the Id advocate commissioner did not allow the repair of the adjacent structure and prays that the defendant no. 7 be permitted to repair the adjacent structure also.

Prayer is considered and allowed.

Defendant no. 7 is permitted to repair the adjacent structure on the same condition as was imposed vide order no. 97 dated 27.02.2023.

To date.

D/C

ACJM-cum-CJSD, Kakdwip

ACJM-cum-CJSD, Kakdwip

JO Code: 000823

Order No. 100

Date: 22.03.23

Today is fixed for SR and appearance.

It appears that requisites were issued on 27.02.2023 and since then considerable time has passed hence, I am compelled to proceed Article 27 of General Clauses Act and presume that there has been proper service and that the defendants no. 8 is not interested to

proceed with the suit. Hence, the suit do proceed ex parte against defendant no. 8.

I find that there is specific order of the Hon'ble High Court to dispose of the suit within a period of one and a half year after disposal of all petitions. Such order was passed on 10.03.2022 and all petitions were disposed on 23.02.2023 and hence, I am inclined to take up the record on a day to day basis for hearing.

The record is taken up for framing of issues.

Issues are framed in separate sheets of paper and kept with the record.

Fix 24.03.2023 for PH. It may be noted that no time will be allowed to any of the parties on any condition including resolution of the Bar.

D/C

ACJM-cum-CJSD, Kakdwip

ACJM-cum-CJSD, Kakdwip