

Title Suit 29/2005
C.I.S. Reg. No.306/2017

Order No. 146 dt. 13.12.2019

Today is fixed for passing order in respect of the petition under Order 1 Rule 10 C.P.C., filed on behalf of the plaintiffs on 20.03.2018.

As fixed today, the record is taken up for passing order.

Perused the petition along with all the other relevant materials available on record.

Considered the submissions advanced by the Ld. Advocates of both the parties, during the course of hearing.

Through the medium of the instant petition, plaintiffs have prayed to implead the persons, names of whom are mentioned in the schedule of the instant petition, they being the legal heirs of deceased plaintiff No.3 namely, Joygopal Nandi. It has been specifically stated in the petition that since the instant suit is for partition, the period of limitation for substitution, would not be applicable.

In the written objection it has been stated that plaintiff No.3 namely, Joygopal Nandi expired long back in the year 2008 and the fact of his demise duly came forward during the course of cross-examination of P.W-1. But no positive steps were taken, on the part of the plaintiffs for substituting the legal heirs of Joygopal Nandi. Moreover, the instant suit already reached the stage of argument and the petition has been filed in a belated stage. Contending these, defendants prayed for rejection of the instant petition.

Upon due consideration of all the relevant aspects, there isn't a slightest of doubt in the mind of this Court that there has been negligence on the part of the plaintiffs to substitute the legal heirs of deceased plaintiff No.3 namely, Joygopal Nandi. Rather, they merely slept over their rights over a period of approximately ten years. However, since the instant suit is for partition amongst other reliefs, the legal heirs of deceased plaintiff No.3, as named above are certainly required to be brought on record for the purpose of proper, effective and complete adjudication of the instant suit. Thus, for the ends of justice, I am inclined in allowing the instant petition.

Hence, it is hereby,

ORDERED

that the petition under Order 1 Rule 10 read with Section 151 C.P.C., dated 20.03.2018, is hereby **allowed** on contest, with a cost of Rs.1000/-.

Plaintiffs are directed to file the revised plaint and pay the cost of Rs.1000/-, in favour of the defendants, positively by the next date so fixed.

Fix **04/02/2020** for filing revised plaint and payment of cost of Rs.1,000/-.

Dic.& Corr. by me;

Judge

Civil Judge, Jr. Divn.
Garhbeta, Paschim Medinipur.

