

(22)
05.05.2022
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

**SA No. 179 of 2009
(IA No: CAN 3/2011)(Old No: CAN 10297/2011)
CAN 6 of 2015(Old No: CAN 9682/2015
CAN 7/2015(Old No: CAN 11280/2015)
CAN 9/2016(Old No: CAN 11709/2016)
(CAN 12 of 2021)(CAN 13/2022)**

**Abdul Rashid Munshi(since deceased)
Alema Munsu (wife) & ors.**

**-versus-
Anowara Bibi & ors.**

Mr. S.S. Arefin, ... for the appellants.

**Re: IA No: CAN 3/2011)(Old No: CAN
10297/2011 & CAN 12/2021.**

Mr. Arefin, learned counsel for the appellants, submits that his clients are not willing to press the applications being IA No: CAN 3/2011)(Old No: CAN 10297/2011) and CAN 12 of 2021.

In view of such stand of the appellants, the said two applications are dismissed as not pressed without any order as to costs.

Re : CAN 9/2016(Old No: CAN 11709/2016).

This is an application for recording the death of the appellant no. 2(a) Hena Munsu although in the cause title of the application erroneously she has been described as appellant no. 2(b); be that as it may, in the application it has been stated that the heirs and legal representatives of the said deceased appellant are already on record.

The name of the appellant no. 2(a) Hena Munsu be expunged from the cause title of the Memorandum of Appeal.

The department is directed to take necessary steps in this regard.

The application being CAN 9 of 2016(Old No: CAN 11709/2016) is thus disposed of without any order as to costs.

Re : CAN 13 of 2022.

This is an application for substitution of the heirs and legal representatives of the deceased respondent no. 3 who died intestate during the pendency of the present second appeal on April 7, 2021.

The appellants prior to this application, filed another application within time for substitution being CAN 12 of 2021 but in the said application since the names of all the heirs and legal representatives of the deceased respondent were not given the appellants decided not to pursue with the said application, instead they have filed the present application, the delay in filing the present application has been caused for the aforesaid reason.

The explanation so offered is satisfactory, as such, the said delay is condoned and in consequence thereof the abatement of the present second appeal against the respondent no. 3 is set aside.

Let the heirs and legal representatives of the said deceased respondent no. 3 be brought on record whose particulars although have been set out under paragraph no. 6 but it is incomplete inasmuch as the address of the proposed substituted respondents have not been mentioned in the said paragraph.

However, an affidavit affirmed by one of the proposed substituted respondents Shri. Khokan Haldar before the Executive Magistrate, Purba Bardhaman, is annexed with the application. The said affidavit discloses the address of the substituted respondents as such the address disclosed in the said affidavit be treated as the registered address of the said substituted respondents in the present appeal. The application is otherwise in form, as such, allowed.

The department is directed to carry out necessary amendment in the cause title of the Memorandum of Appeal.

The application being CAN 13 of 2022 is thus disposed of without any order as to costs.

Mr. Arefin, learned counsel for the appellants, submits that the other applications being CAN 6 of 2015(Old No: CAN 9682/2015 and CAN 7/2015(Old No: CAN 11280/2015) appearing in the list have already been disposed of, the said applications need not be listed again.

Re: SA 179 of 2009.

The appellants are required to put in requisite for service of notice of appeal upon the substituted respondents by speed post with acknowledgement due within seven days from date.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)