

AD-2
Ct No.16
11.12.2024
(SSS)

FAT 264 of 2019
With
CAN 1 of 2024
With
CAN 2 of 2024
With
CAN 3 of 2024

Smt. Sandhya Mallick & Ors.
Vs.
Smt. Arati Dey & Ors.

Mr. Arnab Dutt, Adv.

.....For the
Plaintiffs/Respondents.

1. CAN 2 of 2024 is an application for condonation of delay in preferring the appeal. Upon being satisfied that sufficient cause has been shown, CAN 2 of 2024 is allowed, thereby condoning the delay in preferring the appeal. The appeal be treated to be in form and be registered.
2. CAN 3 of 2024 is an application for substitution of the heirs and legal representatives (husband and daughter) of the original respondent Smt. Arati Dey.
3. Learned Counsel for the plaintiffs/respondents seriously opposes the application and contends

that although Arati Dey died long back during pendency of the suit in the Trial Court and substitution of the heirs of Arati Dey had already taken effect in the Trial Court, the appeal was filed deliberately in the name of a dead person. It is submitted that by such ploy, the appellants are seeking to protract the execution of the impugned decree.

4. Such contention is controverted by learned Counsel for the petitioner.
5. We find that the appellants have failed to prefer the appeal against one of the heirs of the deceased Arati Dey, although such heirs were already substituted in the court below and their names find place in the impugned decree. Hence, for all practical purposes, the present application should not have been captioned as one for substitution but as an application for addition of parties/leave to prefer appeal.
6. Be that as it may, we do not want to shut out the appellants on merits due to such technicality, more so, since the heirs of the deceased Arati Dey were already on record in this suit and one of them has been impleaded in the present appeal as well.
7. Accordingly, CAN 3 of 2024 is allowed, thereby directing the impleadment of Shri Dilip Dey, the

husband of the deceased Arati Dey, as a respondent to the present appeal.

8. The necessary consequential amendment, by impleading the name of Shri Dilip Dey as a respondent, shall be carried out to the Memorandum of Appeal by the learned Advocate-on-record for the appellants during the course of the day.
9. CAN 1 of 2024 is an application for stay of operation of the impugned judgment and decree. We find that the nature of the decree is such which does not permit grant of stay at this stage. The decree is for declaration that the plaintiffs/respondents are co-owners of the suit property and for permanent injunction restraining the defendants/appellants from disturbing the possession of the plaintiffs in the suit property as co-owners. The effect of stay, if granted, would operate as allowing the appeal itself before it is finally heard out, since the impugned decree is substantially in the nature of a restraint on the appellants. As such, we are not inclined to grant stay as prayed for. Accordingly, CAN 1 of 2024 is dismissed on contest without any order as to costs.
10. The appellants shall put in requisites within a week from date. Service on the

plaintiff/respondents, including the added respondent, is dispensed with in view of their appearance through learned Advocate. Service on the proforma defendants/respondents is also dispensed with in view of the said proforma respondent having not contested the suit.

11. The Trial Court records shall be brought by special messenger at the cost of the appellants, to be deposited within a week from date.
12. The appellants shall prepare and file the requisite number of paper books within eight weeks from the date of service of notice of arrival of the Trial Court records on the learned Advocate for the appellants. Liberty to the parties to mention the appeal for inclusion in the list as and when the same is made ready for hearing.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Sen, J.)