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ORDER SHEET

IA NO. GA/6/2024

In CS/118/1987
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
CHANDRA KALA DEVI CHOUDHRY & ORS.
VS
DHARAMCHAND CHAUDHRY AND ORS

BEFORE:

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date: 4th November, 2024.

Mr. Sourojit Dasgupta, Adv.
Joydeep Guha, Adv.
...For the plaintiffs.

Mr. Mohit Gupta, Adv.
Mr. A. P. Agarwal, Adv.
Ms. Sneha Dutta, Adv.
...For defendant No. 1.

The Court: Affidavit-in-reply to the affidavit-in-opposition filed by defendant Nos. 1 and 2 is taken on record.

This is an application for substitution of legal heirs of deceased defendant No. 5 Smt. Sumitra Devi Chowdhury, who died on 8th February, 2006.

Mr. Sourojit Dasgupta, learned Advocate appearing for the applicant submits that steps could not be taken for substitution of legal heirs of deceased defendant No. 5 Smt. Sumitra Devi Chowdhury since the details of the legal heirs of deceased defendant no.5 were not provided by the Advocate on record for defendant Nos. 1 and 2 and the applicant was also not aware of



their names. He seeks for substitution of legal heirs of deceased defendant No. 5 as spelt out in paragraph No. 4 of the application and order in terms of prayer (a) to (f) of the Master's Summons.

On the contrary Mr. Mohit Gupta, learned Advocate appearing for defendant No. 1 submits that the applicant in the year 2018 filed an application in C.S. 1166 of 1987 stating that Smt. Sumitra Devi Chowdhury has expired and therefore the applicant had the knowledge of death of Sumitra Devi Chowdhury since the year 2018. There is no such explanation provided by the applicant in the present application for not taking steps for substitution of legal heirs of Sumitra Devi Chowdhury in the present suit though he had knowledge since the year 2018. He also indicates that the applicant Hemant Kumar Chowdhury is cousin of the legal heirs of defendant No. 5 and therefore it is presumed that he had knowledge of the death of Sumitra Devi Chowdhury since her death in the year 2006. There is suppression of material facts and as such the application needs to be dismissed in limine.

On perusal of the averments made in the application, it is found that Sumitra Devi Chowdhury expired on 8th February, 2006. Thus, there is delay of almost 18 years in filling the application. It is pertinent to note that no reason for such inordinate delay has been disclosed in the application. The only ground taken is that the Advocate on record for the defendant Nos. 1 and 2 since did not provide the necessary details of legal heirs of defendant No. 5, the substitution application could not be filed. It is relevant to note from page 34 of the affidavit-in-opposition that the applicant Hemant Kumar Chowdhury



in the year 2018 filed an application in Suit No. 1166 of 1987 wherein he stated that Sumitra Devi Chowdhury has expired. Therefore, it can well be presumed that the applicant had knowledge of death of Sumitra Devi Chowdhury since the year 2018. Neither such fact nor the steps taken by him for substitution thereafter has been disclosed by the applicant in the present application for substitution. Accordingly, without any reason been assigned for such inordinate delay, the application falls short of merit.

Hence the application being GA 6 of 2024 stands dismissed.

(BIVAS PATTANAYAK, J.)

R.D. Barua