

OD-14

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

EC/94/2023

SUDIPTA BANERJEE AND ORS.
VS
SMT. DIPTI PALIT

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 10th October, 2023.

Appearance:
Mr. Gaurav Purkayastha, Adv.
... for the petitioner.

Mr. Kartik Kumar Ray Adv.
... for the respondent.

The Court: The execution case pertains to an award dated 18th February, 2021. The petitioners and respondents are joint award holders.

The Court is informed that the respondent/joint award holder Smt. Dipti Palit died on 25th November, 2021.

Learned Counsel appearing for the petitioners/joint award holders seek to rely on Order 21 Rule 15 of the CPC to say that the heirs/legal representatives of the respondent/joint award holder are not required to be made parties in this case. This Court does not find the construction given to Order 21 Rule 15 to be acceptable. Order 21 Rule 15(1) provides that any one or more of the joint decree holders can apply for the execution of the decree for the benefit of the others or where one of the

other decree holders has died, for the benefit of the survivors and the legal representatives of the deceased. Rule 15(2) of Order 21 permits the Court to execute the decree on such application if the Court finds sufficient cause for doing so. Rule 15(2) of Order 21 also empowers the Court to make necessary orders for protecting the interests of the persons who have not joined in the application.

It is clear from the statutory position that Order 21 Rule 15(1) presumes that the interest of the survivors of the deceased joint decree holder will be protected. Rule 15(2) of Order 21 hence follows Rule 15(1) and allows the Court to make such orders as would protect the interest of the survivors of the deceased joint decree holder.

In the present execution case, there is no material disclosed before the Court to show that the surviving joint decree holders will protect the interest of the survivors of the deceased joint decree holder. It is also not clear as to why the surviving joint decree holders seek to resist making the legal representatives of the deceased joint decree holder parties to the application.

Hence, the joint decree holders/petitioners are directed to make the legal representatives of the deceased joint decree holder parties to the execution case. The petitioners shall cause necessary amendments to the execution case. The Department shall take due steps in this regard.

List this matter on 5th December, 2023 as prayed for.

Learned Counsel appearing for the deceased joint decree holders will furnish the names of the legal heirs to Counsel appearing for the surviving decree holders by 20th November, 2023.

(MOUSHUMI BHATTACHARYA, J.)