

OD-1

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

IA NO: GA/10/2024
In
CS/2729/1968

JAIDEV MULLICK
VS
RADHANATH MULLICK

Before:
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 23th May 2025

Appearance:
Ms. Anjana
Sengupta., Adv.
...for the defendant no.5
Mr. Siddhartha Lahiri, Adv.
Mr. Debraj Dutta, Adv.
Ms. Nivedita Mullick, Adv.
....for the defendant nos.6[c] and 6[d].

The Court: Partition and Administration Suit No-2729 of 1968.

This is an application filed by the Applicant Nilima Das Mullick praying for the following orders.

- a) Death of the defendant no-5 Amar Kumar Mallick and his widow be recorded.
- b) The name of the legal heirs as mentioned in Affidavit in support of the Master Summons be substituted by way of amendment as shown in place and stead of Defendant since deceased in C.S. No. 2729 of 1968 as shown in red ink in annexure "D".
- c) The Applicant as mentioned in paragraph 2 be allowed to re-verify and affirm the instant plaint filed in C.S. No. 2729 of 1968.
- d) Defendant be directed to carry out the amendment within two weeks from the date of the order made.
- e) Costs of and/or incidental to this application be paid by the Defendants.
- f) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper.

It is the contention of the applicant that on 01.04.1971 the defendant no-5 died leaving behind him the following heirs in accordance with the provision of the Hindu Succession Act 1956.

- a) Amala Mullick (Widow).
- b) Nilima Mullick daughter (minor).
- c) Tapan Mullick son (Minor).

It is further contended that Defendant no.5 died on 1st April 1971 more than fifty years have passed but the plaintiffs in the suit did not take any steps for substitution. So the legal representative of Defendant no-5 has filed this application. After death of defendant no-5 his widow informed her Learned Advocate Bimal Kumar Mitra (deceased) about death of her husband. As the widow of defendant no-5 who was ignorant about the Court procedure and believed in good faith that her Learned Advocate will take necessary step for filing substitution application so she did not make any enquiry regarding this matter. The widow of defendant No. 5 Amala Mullick passed away on 4th February 2021. A few days before her death she came to know that her Learned Advocate Bimal Kumar Mitra is no longer in this world. It was also the assumption of the daughter and son of defendant nos-5 who are now major and sui-juris that substitution application was filed and they are substituted in place of their deceased father.

It is also contended that the daughter of defendant no-5 is housewife and ignorant about law and his son who is residing at New Delhi, could not collect any information about substitution after their mother's death. In the end of the year 2023 they came to know from the concerned Department of this Court at the time of filing vakalatnama on behalf of them that no substitution application has been filed and as such there is a delay in filing application for substitution. It is contended that all heirs daughter and son of defendant no-5 are major and sui-juris, and all the heirs are required to be substituted in place and stead of defendant no-5 by way of

substitution.

The application for substitution was opposed by the defendant No. 6 (c) by filing affidavit in opposition. It is contended by defendant no-6 (c) that the carriage of proceedings is with the plaintiffs and it was duty of the applicant to intimate the death of her parents to the plaintiff. It is further contended that upon the death of Amar Kumar Mullick his widow Amala Mullick and his son Tapan Mullick and his daughter Nilima Mullick the applicant herein was substituted by Order of this Court.

As it is contended that heirs of Amar Kumar Mullick is already substituted but no order of substitution is submitted it would be reasonable to call for a report from the Department as to whether death of Amar Kumar Mullick Defendant no-5 is recorded and whether his wadow Amala Mullick and his son Tapan Mullick and his daughter Nilima Mullick already substituted.

Thus the Department is directed to submit a report as to whether the death of Amar Kumar Mullick the defendant no-5 is recorded and his son Tapan Mullick and his daughter Nilima Mullick (the applicant herein) was substituted.

The report shall be submitted on or before 18/06/2025. Let this matter appear on 19/06/2025.

(BISWAROOP CHOWDHURY, J.)