



Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(CRP) No. 4 of 2024

Date of Decision: 21.10.2024

Shri Antariksh Kalita
S/o Shri. Pradip Kalita
R/o College Road No. 1
Padumoni, Sarupathar,
Golaghat, Assam-785601

::: Applicant

-Vs-

1. The Deputy Commissioner,
East Khasi Hills District,
Meghalaya.
2. Sri. Ranabir Choudhury, Advocate
S/o (L) Rajendra Kumar Choudhury,
Plot No. 249, R.R. Colony,
P.O. Rynjah, East Khasi Hills District,
Meghalaya.

::: Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. P. Bhattacharjee, Adv.

For the Respondent(s) : Mr. S. Sengupta, Addl. Sr. GA for R 1.
Mr. K. Paul, Sr. Adv. for R 2.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication



in press:

Yes/No

ORDER

1. In a pending matter before this Court wherein, Shri Ranabir Choudhury, the respondent No. 2 herein had preferred a revision petition being aggrieved by an order dated 17.12.2014, passed by the Meghalaya Board of Revenue in MBR/RA No. 2 of 2013. In such revision petition, Smti. Prabhashini Dutta was also impleaded as respondent No. 1 with the Deputy Commissioner (Revenue), East Khasi Hills District, Shillong as the respondent No. 2.

2. The revision petition numbered as CRP. No. 2 of 2015 has proceeded in its usual course, when this Court was informed of the death of Smti. Prabhashini Dutta. On submission made by the learned Sr. counsel for the petitioner that since, no relief is sought for as against the deceased respondent No. 1 (in the main revision petition), this Court on prayer made, vide order dated 25.07.2023, had accordingly struck off the name of the deceased respondent No. 1 from the proceedings.

3. However, Ms. P. Bhattacharjee, learned counsel has sought for leave to file an appropriate application in order to bring the legal heir and representatives of the deceased respondent No. 1 in place of the



deceased respondent No. 1 so as to contest the proceedings before this Court. Such prayer being allowed, an application registered as MC(CRP) No. 4 of 2024 was accordingly filed, the same being taken up herewith for consideration.

4. Heard Ms. P. Bhattacharjee, learned counsel for the applicant, who has submitted that this Court vide order dated 25.07.2023 had struck off the name of the respondent No. 1 in the main petition on her death. However, since the time of her death on 22.02.2019, her son Bishwanath Dutta was pursuing the proceedings in the matter. But, he too expired on 13.01.2024 and due to the communication gap between the parties and the counsels, necessary steps for substitution of the deceased respondent No.1 could not be done so.

5. The learned counsel has further submitted that since the legal heir of the deceased Prabhashini Dutta has also expired, the remaining legal heirs have now issued necessary no objection to allow the present applicant to be impleaded in the case as party respondent in substitution of the original deceased respondent.

6. Under the circumstances as is evident in the case herein, the learned counsel has submitted that the applicant has now approached



this Court with this instant application made under Order 1 Rule 10 (2) of the Code of Civil Procedure for impleadment of the applicant as a party herein.

7. In support of this contention, the learned counsel has referred to the case of ***Puran Singh & Ors v. State of Punjab & Ors reported in AIR 1996 (SC), 1092*** para 10 which reads as follows.

“10. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives...”

8. Per contra, Mr. K. Paul, learned Sr. counsel appearing for the respondent No. 2 herein, who is the petitioner in the main revision petition, while opposing the contention of the applicant has submitted that the prayer in this application would show that the applicant has sought for being impleaded as a party respondent in the main proceedings and additionally, for the order dated 25.07.2023 to be vacated. However, the applicant has failed to submit pleadings as to why he should be impleaded and also as to how he is a necessary party to the proceedings.



9. Taking this Court to the order dated 25.07.2023, the learned Sr. counsel has submitted that by such order, this Court has rightly struck off the name of the deceased respondent No.1 (in the main revision petition) from the proceedings since in the order impugned by the respondent No. 2 herein, that is, the order dated 17.12.2013 passed by the Meghalaya Board of Revenue, no substantive right of the deceased respondent No. 1 was infringed, the impugned order being negatively directed only against the respondent No. 2 herein. Therefore, being the complainant who has initiated the said proceedings culminating in the passing of the said impugned order, the applicant herein has not been able to state as to how his rights have been affected. Without any pleadings as to how the passing of the said order dated 25.07.2023 has caused prejudice to him, the applicant having asserted that this is not an application seeking substitution of the deceased respondent No. 1, this application is liable to be dismissed as not maintainable.

10. The learned Sr. counsel has again submitted that the prayer of the applicant to be impleaded as a party to these proceedings relying on the provision of Order 1 Rule 10 (2) CPC, has no basis as he is not at all involved in the lis between the parties since its inception, he could



therefore not be considered as a proper or necessary party. If he could assert any right at all, it can only be on behalf of the deceased respondent and that too, by way of substitution for which he has to approach this Court under the relevant provision of the Code of Civil Procedure, particularly, under Order XXII Rule 4.

11. This Court on consideration of the submission made, is aware that the instant application is two-fold in its approach, the first being the prayer for impleadment of the applicant herein as a necessary party in the revision and the second, being the recall of the order dated 25.07.2023, wherein the name of the deceased respondent No. 1 therein was struck off from the proceedings, thus, not necessitating any legal heir to be substituted in her place.

12. A perusal of the petition under consideration, would show that the applicant has asserted that he is the Attorney Holder and grandson of Late Prabhashini Dutta, the deceased respondent No. 1 in the main revision petition. Thereafter, the date of death of the said deceased respondent No. 1 was given as 22.02.2019. Again, the applicant has further stated that after the death of the deceased respondent No. 1, her son who was the Attorney Holder had been



pursuing the case of the parties. However, he too has since expired on 13.01.2024.

13. It is the further submission of the applicant that there was a communication gap between the parties and the counsels resulting in this Court passing the order dated 25.07.2023, where effectively, the name of the deceased respondent No. 1 was struck off from these proceedings. The applicant went on to state that now, the legal heirs of the deceased respondent No. 1 have executed respective power of attorney in his favour to pursue this matter, and as such, this application is now filed with a prayer to implead the applicant as party respondent and also for the order dated 25.07.2023 to be vacated.

14. At the outset, the learned counsel for the applicant has maintained that this is an application seeking impleadment in terms of the provision of Order I Rule 10 (2) of the Code of Civil Procedure and is not an application for substitution in place of the deceased respondent.

15. It may not be out of place to reproduce the provision cited by the learned counsel that is, Order 1 Rule 10 (2) which reads as follows:

**“ORDER 1
PARTIES TO SUITS**



10(2). Court may strike out or add parties. – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiffs or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

16. There are a number of interpretations as to who is a proper and necessary party who is required to be impleaded or struck off from a proceeding before the Court. The Hon’ble Supreme Court in the case of *Vidur Impex and Traders Private Limited & Ors v. Tosh Apartments Private Limited & Ors* reported in (2012) 8 SCC 384 at para 41.1, 41.2, 41.3 and 41.4 has observed as follows:

“41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.



41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.”

17. The learned counsel for the applicant in course of her argument, had stressed on the fact that the applicant being the legal representative as well as the legal heir of the deceased respondent, he is accordingly the best person to step into the shoes of such deceased respondent, and as such, if not impleaded in these proceedings, the rights of the deceased respondent would stand extinguish without due procedure of law. It is therefore necessary that the said order dated 25.07.2023 be vacated.

18. It is not understood as to how the applicant can intervene in the lis between the parties since apart from a bare assertion that he is the legal heir of the deceased respondent deriving his authority on the strength of the said power of attorney executed by the so called legal heirs of the said deceased respondent, this fact not having been established, since it would stand to reason that the legal heirs of the deceased ought to have appeared before this Court as principal legal representatives of the said deceased and thereafter, in order to pursue the matter, they would then authorized the applicant herein to represent



them. This process has never been followed, and as such, the applicant has not been able to prove his bonafide as far as his right and interest in the matter under consideration is concerned.

19. Even so, since the applicant claiming to be the legal heir of the deceased respondent and therefore, is the best person to pursue the matter, the approach before this Court ought not to have been under the provision of Order 1 Rule 10 (2) CPC, but should have been one under Order XXII Rule 4 (1) which reads as follows:

**“ORDER XXII
DEATH, MARRIAGE AND INSOLVENCY OF PARTIES**

4. Procedure in case of death of one of several defendants or of sole defendant. – (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.”

20. However, the factual aspect of the matter is that the deceased respondent had expired on 22.02.2019, the matter is said to have been diligently pursued by her son Late Bishwanath Dutta, who was still alive in the year 2019. Upon the death of the deceased respondent, an application by her legal representatives to be made a party and to proceed in the proceedings ought to have been filed, however, there is



nothing on record to show that Bishwanath Dutta has ever entered these proceedings to succeed his deceased mother, the deceased respondent No. 1. In view thereof, the provision of Order XXII Rule 4 (3) which provides for a limitation period, being the prescribed period of three years from the date of death of the party to enable an application for substitution in place of the deceased plaintiff or defendant to be filed, would certainly apply to the case of the parties herein, the same being found wanting.

21. Since the applicant has not pressed for substitution in place of the deceased respondent, but has insisted on being impleaded as a proper and necessary party, no credence or good grounds or even legal grounds being shown to convince this Court to allow such prayer, the prayer in this regard cannot be entertained in the form and manner in which it was presented.

22. Again, as to the prayer to vacate the order dated 25.07.2023, as has been argued by the learned Sr. counsel for the respondent No. 2 herein, the applicant has not been able to point out the reasons as to why the said order is to be vacated, vis-à-vis, the infirmity or illegality thereof, this Court has no basis to allow the prayer in this regard. It may



be reminded that the said order was passed on the prayer of the petitioner therein, who is the *dominus litis* and the same was passed on a prima facie observation made by this Court on the assumption that no relief is sought for or claimed as against the deceased respondent No. 1. In view of the provision under Order XXII Rule 4, it is incumbent upon the plaintiff/petitioner to bring the legal heirs or representatives of a deceased defendant/respondent on record, it would be open to the parties to agitate this issue before the proper forum.

23. The authorities cited by the learned counsel for the applicant would not be applicable to the case in hand, and as such, no detailed discussion is necessary to be made in this regard.

24. Mr. S. Sengupta, learned Addl. Sr. GA appearing for the State respondent No. 1 has submitted that no argument will be advanced on behalf of the said respondent.

25. In view of the above observations, this Court finds that the applicant has not been able to make out a case either for impleadment as party respondent in the related proceedings or for vacation of the said order dated 25.07.2023. This application is therefore dismissed as devoid of merits.



26. Application disposed of.

Judge