

23
02.09.2026
Court No. 652
D.Hira

CO 4276 of 2025

**Sovnath Prasad
Vs.
Ramkishan Prasad**

**Mr. Sibnath Ganguly,
Mr. Bishal Das.**

... for the petitioner

Mr. Amartya Basu.

... for the OP

1. An order of the Civil Judge (Junior Division) at Sealdah dated November 17, 2025 passed in Title Suit No. 6 of 2019 is under challenge in the instant revision.
2. The order as above relates to the subject matter whether the petition of the present revisionist/plaintiff under Order 1 Rule 10 of the Code of Civil Procedure filed before the learned Trial Court would be tenable in the eye of law.
3. According to the learned Trial Court as narrated in the said impugned order, such application of the petitioner/plaintiff is not tenable in the eye of law.
4. As for reason, the learned Trial Court has stated that the petitioner has undertaken a wrong procedure. After death of the defendant no. 2 instead of proceeding to substitute the legal heirs of the said deceased defendant, the plaintiff has come over with the prayer for addition of the legal heirs of the said deceased defendant which is an erroneous procedural step taken by the plaintiff/petitioner, not sanctioned under the law. Therefore, a wrong procedure being

adopted by the plaintiff, the learned Trial Court has turned down the said prayer of the petitioner.

5. Mr. Sibnath Ganguly, learned advocate for the petitioner submits that after abatement of the suit against the defendant no. 2 and rejection of his prayer for substitution of legal heirs of the said deceased defendant, the plaintiff/petitioner had no other way than to move an application under Order 1 Rule 10 of the Code of Civil Procedure, to bring on record the legal heirs of the said deceased defendant, who, according to the plaintiff, are the necessary parties in the suit.
6. Mr. Ganguly, learned advocate has further submitted that the tests for consideration of a prayer under Order 1 Rule 10 CPC is different than the question of limitation or whether the legal heirs of the deceased defendant has ever been substituted in the suit or not.
7. In this regard, Mr. Ganguly, learned advocate for the petitioner has relied on the following three judgments:-

a). P.R. Zalavadia vs. Jethabhai Kalabhai Zalavadiya (deceased through LRs & Ors.
reported in **2017(4) ICC 759 (SC);**

b). Banwari Lal (D) by Lrs. & Anr. vs. Balbir Singh reported in **2017 (1) ICC 467 (SC);**

c). Suparna Paul & anr. vs. Dipak Dutta & Ors.
reported in **2023 (2) Indian Civil Cases 1003 (Cal).**

8. Mr. Amartya Basu, learned advocate is appearing for the opposite party/defendant. According to him, the petitioner has come up before the Court with an erroneous prayer under Order 1 Rule 10 of the Code of Civil Procedure, whereas the proper course ought to have been substitution of the legal heirs of the deceased defendant. The petitioner having not taken any steps within the permissible limit of time for substitution of the legal heirs of the defendant, the Court has earlier passed an order of abatement of the suit against the defendant no. 2 that is, dated July 11, 2024.
9. According to the learned advocate for the opposite party/defendant, the said order has reached its finality and there is no scope to add the legal heirs of the deceased defendant in the suit by the plaintiff in some other way than by way of substitution, as prayed for.
10. Having heard both the learned advocates for the respective parties and having perused the materials on record, I find that the defendant no. 2 died sometimes in the year 2022.
11. According to the petitioner/plaintiff, the plaintiff did not have any knowledge about the death of the defendant No. 2 and came to know about the same at a much belated point of time. Then only he could pray for substitution of the legal heirs of the deceased defendant No. 2. However, his prayer for substitution of legal heirs of defendant no. 2 was rejected by the learned Trial Court on July 11, 2024, principally for

the reason of delay. The suit was declared to have been abated against the defendant no. 2.

12. Under such circumstances, the plaintiff/petitioner had come up before the learned Trial Court with his prayer under Order 1 Rule 10 of the Code of Civil Procedure intending to incorporate the legal heirs of the deceased defendant no. 2 as party in the instant suit.
13. However, the plaintiff cannot seek to obtain an order in some other way, which he cannot get through proper course of statutory provisions and legal rules. The doctrine of law that what cannot be done directly, cannot be permitted to be done indirectly – is well-settled. The mandate of law cannot be circumvented by adopting an indirect or circuitous course to achieve an object which, if pursued directly, would not be legally permissible.
14. The petitioners case like this. Having failed to substitute the legal heirs of the defendant in the suit, the petitioner/plaintiff has undertaken a less travelled path to introduce them in the suit, as the rank outsiders. For this, he has undertaken recourse of the two different provisions of law, one after another, after having failed to secure a favourable result at his first attempt, to substitute the legal heirs of the deceased defendants. Law does not permit the course adopted by the present petitioner in the Trial Court.
15. Therefore, this Court finds no impropriety or illegality in the order of the learned Trial Court dated November

17, 2025, which is challenged in the instant revision.

The said order is upheld.

16. Hence, there should not be any interference to the said order passed by the learned Trial Court in this revision.

17. Let this revision be disposed of with the direction upon the learned Trial Court that since the suit is at the verge of completion, the Court may take all reasonable steps to finally adjudicate the suit as early as possible, preferably within a period of six months from the date of communication of copy of this order.

18. With the aforesaid observations and directions, **CO No. 4276 of 2025 is disposed of.**

19. There will be no order as to costs.

20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)