

09.03.2021

Sl. No.7

Court No.9

BM.

-

SA/ 30 /2016

Sri Ganesh Chandra Sadhukhan @ Ganesh Sadhukhan

Vs.

Aloke Kumar Chakraborty & Ors.

With

IA No.:CAN/1/2017 (Old IA: CAN/5092/2017)

With

IA No.: CAN/2/2020

(Via Video Conference)

Mr. Perana Choudhary ... for the appellants

Mr. Ranajit Chowdhury ... for the respondents

Affidavit of service filed be kept on record.

Pursuant to the service Mr. Ranajit Chowdhury enters appearance.

Re: IA No.: CAN/2/2020

This application arise out of second appeal being S.A 30 of 2016. Being aggrieved the plaintiff/appellant preferred this appeal against the judgement and decree dated 6th May, 2013 passed by the learned Civil Judge, Senior Division, Basirhat in Title Appeal No.50 of 2020 against the judgement and decree dated May 19, 2010 passed by the Civil Judge, Junior Division, Basirhat in Title Suit No.74 of 2006.

I have heard the learned advocate for the parties. It is contended that during pendency of this appeal the plaintiff/appellant died intestate on 3rd May, 2019 leaving behind his one son namely Gobinda

Sadhukhan and three married daughters namely Smt. Kakali Pal, Smt. Moumita Mondal and Smt. Dipika Adhikari as his heirs.

Since, the present petitioners being the heirs of the sole deceased plaintiff/appellant were not in the knowledge of the instant appeal, after death of their father they made contact with the learned advocate of the plaintiff/appellant and subsequently after having knowledge of the name of the learned advocate from the record the petitioners tried to get in touch but could not do so because of the distance. In January, 2020 the petitioners contacted the learned advocate of the plaintiff/appellant, since deceased but the learned advocate was not eager to conduct the appeal on behalf of the petitioners as the sole plaintiff/appellant had died. In the meantime, the defendants/respondents approach the petitioners being the heirs of the sole deceased/appellant to resolve the long pending dispute amicably and they agreed to settle the dispute once for all and accordingly, on October, 2020 both the petitioners and the defendants/respondents executed a memorandum of settlement by which both the petitioners and the defendants/respondents have expressly agreed to and now they agree to withdraw all the legal proceeding pending before the civil court including two second appeals being S.A 3 of 2010 and S.A 30 of 2016 filed

by the defendants/respondents and the plaintiffs/appellants, since deceased.

The original memorandum of settlement dated 17th October, 2020 has been annexed as Annexure “B” with a letter.

Now for the purpose of bringing on record the fact of death of the plaintiffs/appellants and past situation of the name of the heirs of the deceased plaintiffs/appellants, the petitioners be substituted in place and stead of the deceased plaintiffs/appellants as per the schedule mentioned hereunder in the application in the red ink and further has prayed for dismissal of the appeal being S.A 30 of 2016 as withdrawn on the basis of terms and conditions contained in the memorandum of settlement dated October 2020, Annexure “B”.

Having heard the learned advocates for the parties and in consideration of the memorandum of settlement arrived at by and between the defendant/respondents and the heirs of the sole plaintiffs/appellants, since deceased and the terms of settlement appear to be legally valid and sufficient.

Let the names of the petitioners be substituted in place and stead of the deceased plaintiff/appellant as they are sue juris and major and capable of prosecuting the case. Accordingly, their names be

noted in the memorandum of appeal and necessary amendment be carried out by the department.

In view of the memorandum of settlement, the appeal be allowed to be withdrawn and thus, the appeal being No.S.A 30 of 2016 be dismissed as withdrawn for non-prosecution.

Re : SA 325 of 2010

With

CAN 4 of 2020

On submission of the learned advocate for the parties, let the second appeal being S.A No.325 of 2010 be also taken up for consideration in view of settlement arrived at by and between the heirs of the sole appellant and the heirs of the sole respondent.

Accordingly, the appeal be treated as on the day's list. The case be treated as disposed of in view of the settlement arrived at between the parties out of Court after noting down the names of the heirs of the deceased respondents as well as the plaintiffs/appellants.

Thus, S.A No.325 of 2010 be also dismissed as withdrawn for non-prosecution by the parties in view of the terms of settlement.

CAN No.4 of 2020 is thus, allowed.

(Shivakant Prasad, J.)