

Item No. 22

03.02.2021
Ct-19

In The High Court At Calcutta
Civil Revisional Jurisdiction
(via video conference)

C.O. No. 812 of 2020
Chanchal Mukherjee & Ors.
v.
Amiyo Kumar Ghosh & Ors.

Mr. Saunak Bhattacharyya
... for the petitioners.

This revisional application has been filed by the plaintiffs in Title Suit No. 485 of 2018 being aggrieved by orders dated August 31, 2018 and December 5, 2019 passed by the learned Civil Judge(Junior Division), 3rd Court at Alipore, South 24-Parganas.

By the order dated August 31, 2018 the learned Court below rejected the prayer of the plaintiffs to ask the defendants to furnish the names of the deceased defendant nos. 1,5,6,10 and 12. By the order dated December 5, 2019 the learned Court below rejected the application for substitution of the deceased defendant no. 1 and recorded abatement of the entire suit. The suit was treated to be disposed of as abated.

Service of the revisional application was attempted on various days by various means. Affidavit-of-service was filed on January 11, 2021 showing service upon the

opposite party no. 7 but the postal articles sent to the opposite party nos. 1 to 6 returned with the endorsement not known. Thereafter, by another order dated December 10, 2020 the petitioners were directed to serve copies of the revisional application upon the opposite party nos. 2,3,4,7,8,9,11,13,14 and 15. Affidavit-of-service was again filed but none appeared. By order dated January 11, 2021, the office was directed to serve copies of the orders passed in the proceedings upon the opposite parties at their addresses given in the cause title of the revisional application and such service was directed to be caused through the Officer-in-Charge of the concerned police station having territorial jurisdiction over the addresses of the opposite parties. The Assistant Registrar-IV has filed a report before this Court showing that the opposite party nos. 1,7,9 and 10 and 8 were served and the notices to the opposite party nos. 2 to 6 were hung in a conspicuous place at their addresses. Affidavit-of-service filed in Court today to show that the opposite party nos. 1 and 3 have also been served by the petitioner. Thus, the revisional application is taken up for disposal. None appears despite service.

With regard to the abatement of the suit in its entirety, in my opinion, the learned Court has erred in law. The learned Court below ought to have at least

allowed the suit to continue against the surviving defendant nos. 2,3,4,7,8,9,11,13,14 and 15 who are still surviving. However, as the Court has disposed of the suit and recorded the abatement of the suit as a whole, liberty is granted to the petitioners/plaintiffs to make an appropriate application for recalling of the order dated December 5, 2019 recording disposal of the suit, insofar as the surviving defendants are concerned. The suit be heard against the said defendants. There could not be abatement of the entire suit. It is a settled law that if the heirs and legal representatives of deceased defendants are not brought on record the suit would abate against such defendants and not against the surviving defendants. The suit will continue as directed hereinabove. The orders impugned are set aside and quashed to the above extent.

If the petitioners gather better particulars with regard to the heirs of the other deceased defendants, the petitioners shall file appropriate application in the learned Court below but if the other defendants are unaware of the said information, the court is helpless to pass orders as prayed for.

The revisional application being CO No. 812 of 2020 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

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(Shampa Sarkar, J.)