

08.04.2021
Court No. 19
Item no.10
CP

C.O. 3551 of 2019

Sukdeb Karak & ors.

vs.

Robilochan Pal & ors.

Mr. Arup Kundu

.....for the petitioners.

Mr. Soumik Ganguli

.....for the opposite parties.

This revisional application arises out of an order dated August 6, 2019 passed by the learned Civil Judge (Junior Division), 1st Court, Bankura Sadar.

By the order impugned two applications under Order 1 Rule 10 (2) read with Section 151 of the CPC for addition of parties were rejected. In the first application the plaintiffs/petitioners wanted to add 'Meera', wife of Kiriti Pal as defendant no. 3 (Ja) as Kiriti Pal had expired and by the second application the plaintiffs sought to add legal heirs of one 'Mitton', one of the co-sharers of the property of the plaintiffs, as plaintiff no. 1 (Gha, Unga, Cha and Chha).

The learned court below rejected the said applications on the ground that the applications for addition of parties were not accompanied by any documentary evidence of their deaths.

This was an erroneous approach by the learned court below. It is not for the parties seeking to add heirs of a deceased in a partition suit before drawing up of the final decree to produce any such documentary evidence. It is upto the added parties to come forward before the court to file their pleadings and contest the proceedings. In a partition suit all co-sharers need to be added as partition should be made by metes and bounds. Each party is a plaintiff as also a defendant. Strict laws of substitution does not apply and the parties can be brought on record by mere addition under Order 1 Rule 10(2) of the CPC. If after the pronouncement of the preliminary decree the share-holders die then their heirs have to be brought on record and no one can be left out.

In this case, the original plaintiff was Jamini Bala Dasi. She died after the preliminary decree was passed in 1974. Thereafter, her sons were impleaded but Mitton was left out. Subsequently, upon such discovery the heirs of deceased Mitton is sought to be brought on record by addition of parties and also one of the heirs of a deceased defendant whose name had been left out was also sought to be brought in.

The order impugned is set aside. The applications for addition of parties are allowed.

The learned court below is directed to add the parties as per the applications filed by the plaintiffs.

Upon such addition, notice of the suit will be sent to the added parties for their necessary action and the suit will proceed in accordance with law.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)