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SK
Ct. No. 18
05.02.2021

**C.O. No. 1594 of 2020
(Via Video Conference)**

**Romita Majumder (Paul) & Anr.
Vs.
Ashutosh Das & Ors.**

Ms. Runu Choudhuri ... For the petitioners.

None appears on behalf of the opposite parties in spite of service.

The suit for ejectment being Ejectment Suit No. 494 of 2012 filed by the father of the petitioners was decreed on July 06, 2015.

The said decree when was put into execution gives rise to Ejectment Execution Case No. 116 of 2017 before the learned 4th Judge, Small Causes Court at Calcutta.

The father of the petitioners, the original decree-holder has died. The present petitioners being the heirs and legal representatives of the said original decree-holder are proceeding with the said execution case.

An application for police assistance to execute the said decree has been taken out registered as Miscellaneous Case No. 32 of 2018 before the executing Court.

Ms. Choudhuri, learned counsel appearing on behalf of the petitioners submits that since the names of the petitioners are not appearing in the decree, they have been denied to proceed with the said misc. case, as such an application under Section 151 of the Code of Civil

Procedure was filed for substitution of the names of the present petitioners in the decree.

The learned trial Judge by the Order No. 34 dated January 3, 2020 has dismissed the said application holding that the plaintiff Sekhar Nath Majumder died on December 13, 2018 and the decree was passed on July 6, 2015, that is long after passing the said decree, as such the prayer of substitution cannot be entertained.

By virtue of Order XXII Rule 12 of the Code of Civil Procedure Rules 3, 4 and 8 thereof are not applicable in the execution proceeding. The petitioners are entitled to proceed with the execution case levied by the original decree-holder and/or any incidental proceeding thereto by bringing them on record.

The learned trial Judge therefore has not committed any error in dismissing the said application filed by the petitioner.

The order impugned, therefore, does not call for any interference.

C.O. 1594 of 2020 is disposed of with the above terms.

No order as to costs.

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

(Biswajit Basu, J.)