

26.04.2022
S/L No.45
KS

F.A. 67 of 2018
With
IA No. CAN 1 of 2017 (Old No. CAN 7199 of 2017)
+
IA No. CAN 2 of 2021
+
IA No. CAN 3 of 2021

Sri Subhankar Dey
-Vs.-
Sri Bishnupada Panda & Ors.

Mr. Tanmoy Mukherjee
Mr. Kallol Kumar Maity
Mr. Souvik Das
Mr. Rudranil Das

.....For the Appellant

Affidavit of service filed by the appellant is taken on record. In spite of substituted service the respondents are not represented.

This is an application for substitution of legal heirs of original respondent no.1 under Order 22 Rule 4 of the Code of Civil Procedure. During the pendency of the appeal, the original respondent no.1 died intestate on 17th May, 2021 leaving behind persons mentioned in paragraph 3 of the application as his legal heirs and representatives. The two wives of the deceased have already been impleaded as

respondent nos.2 and 3 in the first appeal. However, the sons and daughter of the said deceased were not made parties. The sons and daughter of the said deceased namely, Ghanashyam Panda, Asit Panda and Kalpana Panda (Acharya) are all major, sui juris and of sound mind and right to sue and continue to the suit survives. In view thereof, the application is allowed by recording the death of original respondent no.1 and recording the wives of the deceased are already on record. The daughter and sons mentioned in paragraph 3 shall be added as respondent nos.1a, 1b and 1c in the Memorandum of Appeal and in all connected applications.

Department is directed to carry out the necessary amendments within two weeks from the date of communication of this order.

Thus, IA No. CAN 2 of 2021 is disposed of.

In view of the substituted service carried out in terms of the order and the advertisement published having clearly mentioned that it shall be both for the purpose of publication as well as for the notice of appeal, we take up the appeal for consideration as it involves a very short question of law. In spite of substituted service the respondents are not

represented. In a suit for partition the Learned Trial Court rejected the prayer of the plaintiff in respect of 'Ka' schedule property on the ground that the plaintiff has not produced a single cogent document to show that either Srikanta Panda or his son Bishnupada Panda ever had any share in the "Ka" schedule property so as to authorize Bishnupada Panda to execute Exhibit - 6 in respect of 08 decimal of land of "Ka" schedule property. It further records that the plaintiff has unable to produce any record of rights to that effect nor there is any scrap of paper produced to establish the source of their alleged title over the "Ka" schedule plot. It thus appear that in view of failure on the part of the plaintiff to produce any record of rights to establish the source of their title over the "Ka" suit plot the suit was dismissed against the plaintiff as regards "Ka" schedule property.

In the appeal application has been filed under Order 41 Rule 27 of the Code of Civil Procedure.

In the appeal the petitioner filed an application under Order XXXI Rule 27 of the Code of Civil Procedure. In the said application the petitioner has produced a Photostat copy of the list of documents and the copy of record of rights.

Mr. Mukherjee, the learned Counsel appearing on behalf of the appellant has drawn our attention to the order dated 1st April, 2016 where during examination in chief, P.W.1 had produced 25 documents out of which the last document was Photostat copy of R.S.R.O.R. in respect of Khatian no.201 of Bakpura. From the nature of the documents filed we feel that the learned Trial Judge was justified in not making the Photostat copy of R.S.R.O.R. as exhibit.

Learned counsel for the appellant however submits that the appellant now is in possession of the original R.S.R.O.R and a photostat copy of the said record of right is annexed with application for additional evidence.

In view of the fact that it is a suit for partition and the photocopy of the R.S.R.O.R was produced but inadvertently the original could not be produced and no secondary evidence was led for accepting the photocopy of the R.S.R.O.R, we permit the appellant to file an application before the Learned Trial Court for marking the said document as an exhibit in accordance with law and to decide thereafter the entitlement of the plaintiff in respect of "Ka" schedule property.

Thus, IA No. CAN 3 of 2021 is disposed of.

Accordingly, the appeal and the connected applications are disposed of.

In the event, the plaintiff is able to establish his right in respect of “Ka” schedule property on the basis of the said R.S.R.O.R, the Learned Trial Judge shall modify the preliminary decree in accordance with law.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)