

(06)
19.04.2022
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

**CO No. 518 of 2018
(IA No: CAN 1 of 2022)
(IA No: CAN 2 of 2022)**

**Shrimati Abha Roy alias Biswas
-versus-
Shrimati Ashalata Biswas & ors.**

Mr. Debasish Roy,
Mr. Debnath Mahata, ... for the petitioner.

Mr. Susanta Pal,
... for the opposite party no. 2.

Re : IA No: CAN 1 of 2022.

This is an application for recording the death of the opposite party no. 1 who died intestate during the pendency of the revisional application on May 11, 2021.

In the application it has been stated that the heirs and legal representatives of the said deceased opposite party are already on record.

In view of the said statement, the death of the opposite party no. 1 be recorded and her name be expunged from the cause-title of the revisional application.

The department is directed to amend the said cause title.

IA No: CAN 1 of 2022 is disposed of without any order as to costs.

Re : CO 518 of 2018.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration and is directed against the order dated August 4, 2017 passed by the 12th Court of learned Additional District Judge, Alipore, District: 24 Parganas (South) in Misc. Appeal No. 399 of 2014.

The learned Trial Judge by the order dated September 20, 2014 dismissed an application filed by the petitioner under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

The petitioner aggrieved by the said order had preferred the connected Misc. Appeal.

The appeal Court below by the order impugned has dismissed the said appeal.

The parties during the pendency of the revisional application have arrived at a settlement and have filed a joint compromise application being CAN 2 of 2022 and the parties are praying disposal of the revisional application in terms of the said compromise application.

Under paragraph no. 19 of the said application, the terms of the settlement have been enumerated.

Mr. Debasish Roy, learned counsel for the petitioner, submits that there is a typographical mistake in sub-paragraph (b) of paragraph no. 19, wherein the petitioner no. 2 should be read as petitioner no. 1.

Mr. Susanta Pal, learned counsel for the opposite party no. 2, does not dispute the said submissions of Mr. Debasish Roy.

The paragraph no. 19 of the said application is quoted below:

“19) That your petitioners have decided to resolve all the disputes and differences between them on the following terms and conditions:

- a) That your petitioner No. 2 is the absolute owner in respect of the properties mentioned in Lot “A”, Lot “B” and Lot “C” of the registered Deed of Partition dated August 16, 2012.*
- b) That your petitioner No. 2 is the absolute owner in respect of the properties mentioned in Lot “D” of the registered Deed of Partition dated August 16, 2012.*
- c) That the staircase, landings, underground reservoir, overhead tank, path, passage, entrance, side space, sewers, drains, water, water courses, plumbing and electrical installations, lights, liberties, easements, appendages, appurtenances lying and situate and being in the said properties shall remain for common user of your petitioners and without written consent of the parties no repair should be made over the common portion.*
- d) That no construction will be made on the roof of the building by any of your petitioners without consent in writing of*

the others and without any building sanction plan.

- e) *That your petitioners shall shift all the meters of the premises to the external wall of the verandah which is the common part or portion of the property and the same will be covered properly to protect the meters and costs for such shifting shall bear by your petitioners in equal proportion.*
- f) *That your petitioners shall take steps for disposal of the suit pending before the Civil Judge (Junior Division), Fifth Court at Alipore.”*

In view of the said settlement, the revisional application is disposed with a liberty to the parties to file similar application before the learned Trial Judge, and if such an application is filed, the learned Trial is requested to dispose of the suit, in terms of the said application in accordance with law.

The application being **IA No: CAN 2 of 2022** is **disposed of**.

CO 518 of 2018 is **disposed of** with the above terms without any order as to costs.

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

(Biswajit Basu, J.)