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Ct. 18
27.06.2022

C.O. No. 946 of 2018
I.A. No : CAN 1 of 2021

Sri Prabir Sarkar
Vs.
Smt. Jamini Roy & Ors.

Mr. Nabankur Paul,
Md. Apzal Ansari ... For the petitioner.

Mr. Sounak Bhattacharyya,
Mr. Sounak Mondal ... For the opposite parties.

Re : I.A. No : CAN 1 of 2021

This is an application for substitution of the heirs and legal representatives of the deceased sole petitioner, who died intestate during the pendency of the revisional application on February 20, 2020. The application is in form and within time, as such allowed.

Let the heirs and legal representatives of the said deceased petitioner, whose particulars have been set out under Paragraph 3 of the application be substituted in place and instead of the said deceased petitioner.

The department is directed to carry out necessary amendments in the cause title of the revisional application.

Vakalatnama of the substituted petitioners annexed with the application be put in with the record.

I.A. No : CAN 1 of 2021 is thus disposed of without any order as to costs.

Re : C.O. 946 of 2018

The deceased defendant no. 2 of a connected suit for recovery of khas possession was the petitioner of the present application under Article 227 of the Constitution of India. On the death of the original petitioner, his heirs and legal representatives have been substituted.

The said suit being Title Suit No. 134 of 2010 is pending before the learned Civil Judge, (Junior Division) at Jalpaiguri, District – Jalpaiguri.

The learned Trial Judge by the order impugned being Order No. 47 dated December 06, 2017 has allowed an application filed by the plaintiffs/opposite parties seeking amendment of the plaint, ex-parte.

Mr. Nabankur Paul, learned advocate for the substituted petitioners submits that the grievance of the petitioners is that they were not given any opportunity to contest the said application, even copy of the said application was not served upon them.

Mr. Saunak Bhattacharyya, learned counsel for the plaintiffs/opposite parties although disputes the contention of Mr. Paul that the copy of the said application was not served upon the predecessor of the petitioners but he could not justify the ex parte disposal of the said application. Be that as it may, the application needs to be disposed of on contest.

The order impugned therefore is set aside.

C.O. 946 of 2018 is disposed of with a request to the learned Trial Judge to decide the said application afresh as expeditiously as possible in accordance with law, needless to say after giving an opportunity to the petitioners to file written objection to the said application.

There shall be 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.)