

10.08.2022
Item No.16
Ct. No.7
CHC
(disposed of)

C.O.1562 of 2022

**Sri Raju Goel & anr.
Vs.
Sri Prabir Kumar Mishra**

Mr. Souradipta Banerjee,
Ms. Fatima Hassan
...for the petitioners

Mr. Ashis Chandra Bagchi, Sr. Advocate
Mr. Shibendra Nath Chattopadhyay,
Mr. P. Misra
...for the opposite party

Affidavit-of-service furnished by the petitioners be taken on record.

The petitioners assail order dated 25th April, 2022, passed by learned Judge, 3rd Bench, Presidency Small Causes Court, at Calcutta, in Ejectment Suit No.6997 of 2014 allowing petition under Order 22 Rule 4A C.P.C. for substitution and thereby permitting addition of party, who is not legal heir of deceased defendant.

Admittedly, this is a suit for eviction impleading sole defendant as necessary party to this case. During the ongoing process of suit, the defence of the sole defendant/tenant has been struck off against delivery of possession. The cross-examination of the suit is going on. The sole defendant, Hardyal Mochi alias Hardyal Goel, died on 22nd January, 2022, leaving behind heirs/legal representatives to step into the

shoes of the deceased defendant in accordance with the law. As the learned advocate representing defendant did not furnish the death information of the sole defendant, the plaintiff/opposite party somehow upon gathering information filed an application under Order 22 Rule 4A C.P.C. on 21st April, 2022 by way of put up petition.

Learned advocate appearing for the petitioners submits that on the scheduled date fixed by the court below, the witness for the defence was due to be examined, and petitioners, simply to give response to the petition, filed by the plaintiff/opposite party under Order 22 Rule 4A C.P.C. sought for time to obtain instruction.

It is contended by the learned advocate for the petitioners that such petition being filed by some person, other than legal heir of deceased sole defendant, learned court below mechanically, proceeded to allow the petitioner under Order 22 Rule 4A C.P.C. thereby allowing addition of somebody as defendant no.1(a) in this case, which is against the spirit of substitution.

It is also contended that there cannot be any addition of party in the manner as proposed to be done, without adhering to the provisions of the law as available under the Code of Civil Procedure.

Per contra, Mr. Bagchi, learned Senior Advocate appearing for the opposite party/plaintiff submits that the sole defendant died on 22nd January, 2022 leaving behind as many as five (05) legal heirs/legal representatives, but all the legal heirs have not come up before this Court claiming themselves to be substituted in place of sole defendant, since deceased, but some of the legal heirs filed the petition seeking to obtain instruction on 25th April, 2022.

Having considered the submission of both sides, it appears that undenying position is that the sole defendant died on 22nd January, 2022, leaving behind heirs, as disclosed in the paragraph-“4” of petition under Order 1 Rule 10(2) C.P.C. read with Section 151 C.P.C.

The addition of proposed party appears to have been made in aid of Order 22 Rule 4A C.P.C. without resorting to Order 1 Rule 10 C.P.C. giving required consideration for the purpose, as per settled proposition of the law.

The order impugned dated 25th April, 2022, is, thus, set aside with direction upon the court below to rehear the petition under Order 22 Rule 4A C.P.C. afresh, providing sufficient opportunity of hearing to either of the parties to this case, preferably within a period of four (04) weeks from the date of communication of this order, but without granting any

unnecessary adjournment, unless it is extremely unavoidable.

This would not, however, prevent the petitioners to file required application praying for substitution of heirs for the deceased defendant taking recourse to the law, if not already filed in the meantime.

Parties are directed to make communication of this order to the learned court below.

With this observation/direction, the revisional application stands disposed of.

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.

(Subhasis Dasgupta, J.)