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C.O. 1586 of 2022

Smt. Shibani Ghorai

Vs

Smt. Kanan Bala Samanta & Ors

Mr. Gopal Chandra Ghosh,
Ms. Jayeta Kaunda Mitra,
... For the petitioner.

Mr. Abhisek Singh
Mr. Asif Hossain, ... For the opposite parties.

The impugned order dated 14th March, 2022 passed by learned Civil Judge (Junior Division), Haldia acting as District Delegate in Judicial Misc Case No. 62 of 2010, rejecting the petition under Order 1 Rule 10 CPC is under challenge in this revisional application.

Adverting to para 3 of the copy of application filed by the petitioner appealing at page 16 of the instant revisional application, learned advocate appearing for the petitioner submits that it was purely an application for substitution, but the Court has inadvertently described the same to be a petition under Order 1 Rule 10 CPC merely looking at the mentioning of the cause title of the petition captioning the section of the petition.

The petitioner has claimed herself to be the daughter of left Kamala Samanta, who admittedly left this world on 24th May, 2020. Alternatively, the petitioner, while seeking substitution described herself to be the legal heirs of her mother Kamala Samanta. It is thus contended by the learned advocate for the

petitioner that the petitioner found her birth by reason of relationship of Kamala Samanta with Dulal Chandra Samanta (since deceased).

Learned advocate for the petitioner further argues that learned Court below has mechanically rejected the prayer without adverting to the facts disclosed in the relevant averment of petition.

Per contra, learned advocate for the opposite party no. 1 submits that the Court below has already gone into the point raised by the petitioner observing that the right to sue, or to defend has not survived for petitioner.

It is thus contended by the learned advocate for the opposite parties that question of substitution also in context with the availability of right to sue or defend has also been considered by the Court below. Supporting the order of the Court below, it is submitted by the opposite parties that there lies nothing to be interfered with.

In course of hearing, besides heirship certificate, no document is produced to reveal that the petitioner was born out of the relationship between Kamala Samanta and Dulal Chandra Samanta.

As the Court below has already considered the issue pertaining to availability of right to sue or defend, irrespective of the citation of section mentioned in the cause title of petition, this Court does not find anything

convincing to interfere with the order impugned.

The order impugned does not call for any interference.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)