

40. 18-04-2022

sg Ct. 8

SAT 201 of 2019
CAN 1 of 2019 (Old CAN 8075 of 2019)
CAN 2 of 2019 (Old CAN 9855 of 2019)

Gurai Saddar, since deceased, represented by
Sibu Prasad alias Sibu Prasad Sardar & Ors.

Versus

Habu Sarddar, since deceased, represented by
Nepal Sarddar & Ors.

Mr. Rabinidranath Mahato, Adv.

Mr. Aritra Shankar Ray, Adv.

...for the appellants

Mr. Tanmoy Mukherjee, Adv.

Mr. Anindya Sundar Das, Adv.

Mr. Souvik Das, Adv.

Mr. Rudranil Das, Adv.

...for the respondents 1 ka to 1 gha

By consent of the parties, the appeal and the connected applications are taken up together and disposed of by this common order.

In Re: CAN 1 of 2019 (Old CAN 8075 of 2019) and
CAN 2 of 2019 (Old CAN 9855 of 2019)

Sufficient cause being shown for not being able to appear before the Court when the matter was dismissed for default on 25th July, 2019.

The order dated 25th July, 2019 is recalled and the appeal is restored to its original file.

CAN 1 of 2019 (Old CAN 8075 of 2019) and CAN 2 of 2019 (Old CAN 9855 of 2019) are, accordingly, disposed of.

In Re: SAT 201 of 2019

In a partition suit, an appeal had been preferred to the

Appellate Court by the plaintiffs being aggrieved by the preliminary decree. The Appellate Court dismissed the appeal as abated on the ground that the plaintiffs/appellants have failed to substitute the legal heirs of the deceased respondents disregarding the fact that it is the responsibility of the pleader of the respondents so died to furnish the particulars of the legal heirs and representatives to the plaintiffs in order to enable the plaintiffs to file an application for substitution. Moreover, the defendants, whose substitution could not be taken place, had never contested the suit and there was a specific prayer made in the application for exempting the necessity of substituting the legal heirs of the deceased defendants.

The Appellate Court on a complete misreading of the provisions of the Code of Civil Procedure dismissed the appeal as a whole ignoring the fact that the appeal is arising out of a partition suit and the defendants have not complied with the Order XXII Rule 10A of the Code of Civil Procedure.

Mr. Tanmoy Mukherjee, learned Counsel representing the defendants have submitted that the names and particulars of the legal heirs and representatives of the deceased defendants shall be furnished to Mr. Aritra Shankar Ray, learned Advocate, junior to Mr. Rabindranath Mahato, learned Advocate representing the appellants within ten days from date in order to enable the appellants to file necessary application for substitution.

The appeal succeeds. The order of the Appellate Court is set aside.

Upon substitution being carried out, the Appellate Court is requested to dispose of the appeal as expeditiously as possible.

The appeal is, accordingly, disposed of.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)