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Ct. 18
21.02.2022

**C.O. No. 2360 of 2019
IA No : CAN 1 of 2021
(Via Video Conference)**

**Smt. Renuka Bala Mondal, since deceased, her
heirs and legal representatives Sri Ujjwal Mondal
& Ors.**

Vs.

Sri Bhim Charan Dutta & Ors.

Mr. Sanjay Mukherjee,
Mr. Dhananjoy Nayak ... For the petitioners.

Mr. Amitabha Karmakar,
Mr. Gautam Banerjee ... For the opposite party no. 7.

Affidavit-of-service filed on behalf of the petitioner
be kept with the record.

The revisional application under Article 227 of the
Constitution of India is directed against the order
dated May 30, 2019 passed by the learned District
Judge, Purba Medinipur in Title Appeal No. 08 of
2016.

The predecessor-in-interest of the present
substituted petitioners, namely Renuka Bala Mondal
along with one Sudhir Chandra Dutta @ Chowdhury
(since deceased) filed Title Suit No. 99 of 1979
subsequently re-numbered as Title Suit No. 30 of
1990, inter alia, for a decree of declaration of right,
title, interest over the suit property.

The learned Trial Judge by the judgment and
decree dated September 16, 2015 dismissed the said
suit on the ground that the name of the plaintiff no. 2

said Sudhir Chandra Dutta @ Chowdhury on his death although has been expunged from the cause-title of the suit but averments concerning the said deceased plaintiff in the plaint since has not been expunged, the suit is not maintainable.

The plaintiffs aggrieved by the said judgment and decree have preferred the connected Title Appeal.

In the appeal the appellant, the deceased Renuka Bala Mondal, to remove the said defects, took out an application seeking amendment of the plaint. The appeal Court below by the order impugned has dismissed the said application holding that the appellant has failed to explain the reason for not approaching the Court for such amendment before commencement of trial.

The death of the plaintiff no. 2 happened subsequent to the commencement of the trial and in view of the nature of the amendment sought for the order impugned is not sustainable and is accordingly set aside.

The application filed by the petitioners seeking amendment of the plaint is allowed. The substituted appellants are permitted to file amended plaint within two weeks from date. The defendants are entitled to file their additional written statements within two weeks from the service of copy of the amended plaint upon them. The appeal Court below is requested to

expedite the disposal of the appeal in accordance with law.

C.O. 2360 of 2019 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 with all requisite formalities.

(Biswajit Basu, J.)