

FMAT 295 of 2022
with
CAN 1 of 2022

(Shahid Reza & Ors. Vs. Sahajada Begum & Ors.)

Mr. Arnab Mukherjee
Md. Hanif
Mr. Mir Nasiruddin

..... For the appellants

Mr. Sanjay Mukherjee
Mr. Abdul Hamid Molla
Sk. Zafar
Md. Abdul Halim

..... For the respondents

The present appeal has been filed challenging an order dated 10th June, 2022 passed by the learned Civil Judge (Senior Division), 4th Court, at Alipore in Misc Case No. 836 of 2009 arising out of Title Suit being T.S. No. 183 of 1997.

In connection with the aforesaid appeal, an application being CAN 1 of 2022 has been filed.

Records would reveal that the defendant nos. 1 and 12, during pendency of the aforesaid suit, had died. An application was, thereafter, taken out for substituting the legal heirs of the deceased defendants. The said application was dismissed by an order dated 30th July, 2008 as being time barred and by recording that the suit had abated. An application being Misc. Case No. 836 of 2009 was filed thereafter for setting aside abatement. Although the aforesaid application was initially dismissed

as the same was not accompanied by any petition praying for condonation of delay, the same was later restored by order dated 21st September, 2019. Subsequently by order dated 19th January, 2021 the learned Court was pleased to pass an order of status quo. Such order was passed in the Misc. Case No. 836 of 2009. At the instance of the respondents, however, by the order dated 10th June, 2022 the Misc. Case No. 836 of 2009 was rejected and the order dated 21st September, 2019 was recalled.

The present appeal has been preferred challenging an order refusing to set aside the abatement of Title Suit No. 183 of 1997 in Misc. Case No. 836 of 2009.

In course of hearing, the instant appeal Mr. Sanjay Mukherjee, learned advocate representing the respondents submits, upon instruction that the order impugned may be set aside and the order directing abatement of the suit may also be set aside. He further submits that the parties should be relegated to the trial Court for adjudication of the suit on merits.

On the basis of the aforesaid submission made by Mr. Mukherjee, we set aside the order dated 10th June, 2022 which is impugned in the present appeal as also the order recording abatement of the suit passed by the learned Court on 30th July, 2008. We thus direct that the order of abatement of the suit be set aside and the legal

heirs of the deceased defendant nos. 1 and 12 be brought on record.

We are informed by the parties that the appellants have filed another application under Order 1 Rule 10 of the Code of Civil Procedure, *inter alia*, for bringing on record some of the legal heirs of the proposed substituted defendants, who have died during pendency of the application for substitution and/or for setting aside abatement.

We direct that the legal heirs of the proposed substituted defendants also be brought on record.

The plaintiff is directed to file a copy of the amended plaint incorporating the names of the substituted defendants, before the learned trial Court within four weeks from date. Copy of such amended plaint should be served on all the defendants. We are of the view that the interim order of status quo that was subsisting when the Trial Court had recorded that the suit had abated, should continue till disposal of the suit.

Since the aforesaid suit is pending for more than two decades, we request the learned trial Court to dispose of the suit as expeditiously as possible, preferably within a period of one year from date without granting any unnecessary adjournments to either of the parties.

We are also informed that an appeal being Misc. appeal No. 8 of 2019 has been filed by the appellants before the Court of 13th Additional District Judge,

Alipore. Mr. Arnab Mukherjee, learned advocate appearing for the appellants undertakes before this Court that he shall not proceed and withdraw the Misc Appeal No. 8 of 2019 pending before the Court of 13th Additional District Judge, Alipore.

With the aforesaid directions and/or observation, the appeal and the connected application being CAN 1 of 2022 are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)