

09.06.2022  
(D/L-38)  
Ct.-18  
(Susanta)

C.O. 2837 of 2019  
With  
I.A. No. CAN 1 of 2019 (Old CAN No. 11566 of 2019)

Naimuddin Sk.  
-Vs-  
Nasiruddin Sekh & Ors.

Mr. Partha Pratim Roy,  
Mr. Sarbananda Sanyal,  
.... For the Petitioner.

Ref: **I.A. No. CAN 1 of 2021**  
**(Old CAN No. 11566 of 2019)**

Mr. Partha Pratim Roy, learned advocate appears on behalf of the petitioner and files affidavit-of-service, which is taken on record.

This is an application for substitution of the heirs and legal representatives of the deceased plaintiff/opposite party no. 1 who died intestate during the pendency of the revisional application on November 1, 2019.

The application is within time and in form, therefore, allowed.

Let the said heirs and legal representatives of the deceased petitioner, whose particulars have been set out under paragraph 3 of the said application, be substituted in place and instead of the deceased petitioner.

The department is directed to carry out the necessary amendment in the Cause Title of the revisional application.

I.A. No. CAN 1 of 2021 (Old CAN No. 11566 of 2019) is thus, disposed of without any order as to costs.

**C.O. 2837 of 2019**

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in a suit for partition and is directed against the order no. 201 dated March 12, 2019 passed by the 2<sup>nd</sup> Court of learned Civil Judge (Senior Division), Berhampore, District- Murshidabad in the said suit being Title Suit No. 9 of 1995.

The petitioner applied for correction of the preliminary decree under Section 152 of the Code of Civil Procedure after the said preliminary decree was made final.

The learned Trial Judge on scrutiny of the records found as follows:-

***“Having considered all the above facts, this Court finds that the instant suit was instituted by the plaintiff in year dt. 22.12.1990. The record also reveals that defendant No. 1 filed one written statement on 05.01.1995. PW-1 for the plaintiff was examined on several dates from 18.06.1998 to 10.08.1998. Thereafter the DW-1 was examined and cross-examined from 28.08.1998 to 05.12.1999 on several date fixed in this case. The preliminary decree dated 27.01.1999 was passed by this court after hearing the arguments of both sides at length. From the case record, it is also gathered that the defendant no. 1 preferred an appeal being No. T.A-63/99 against the preliminary decree dated 27.01.1999 and the same appeal was dismissed for default on the part of the defendants/appellant as per order dated 20.04.2005. From the case record, it also transpires that a final decree petition was filed by the***

***plaintiff on 26.10.2006 which was allowed on 06.01.2007 as per order No. 109. It also appears from the case record that the Ld. Advocate commissioner completed his commissioner's work and submitted a commissioner's report on 22.07.2010. The parties to the suit were granted opportunities to file w/o if any against the said commissioner's report but in spite of getting several opportunities from 27.07.2010 to 07.01.2015 no w/o was filed by defendants against the said report even after the plaintiff's several request for acceptance of the commissioner's report. The defendant No. 1, However, filed one w/o against the commissioner's report on 24.03.2015."***

In view of the aforesaid position of the record, the learned Trial Judge by the order impugned has dismissed the said application filed by the petitioner.

The correction as sought for is beyond the scope of Section 152 of the Code of Civil Procedure. This Court, therefore, does not find any illegality and/or infirmity in the order impugned warranting interference.

C.O. 2837 of 2019 is dismissed 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.)