

12.6.2023  
47  
Ct. no. 652  
sb

**C.O. 410 of 2018**

**Sri Mongal Roy & Ors.  
Vs.  
The State of West Bengal & Anr.**

Mr. Debasish Chakraborty ....for the petitioners

Affidavit of service filed by the petitioners is taken on record. In spite of service, opposite parties are not represented.

Order no. 72 dated 16.11.2017 passed by the learned Additional District Judge-II, Bankura in Title Appeal no. 68 of 2007, has been assailed in the present application.

The petitioners contended that the petitioners as plaintiffs instituted a suit for declaration in respect of Ka and kha schedule properties and the court below decreed the said suit on 30<sup>th</sup> November, 2006. Against the said judgment and decree, the defendant nos. 1 and 2 preferred aforesaid Title Appeal, being no. 68 of 2007, before the learned District Judge, Bankura.

During pendency of the said Title Appeal being 68 of 2007, the decree holders who are impleaded as Respondent nos. 1(ka), 18, 4, 1(kha), 20(ka), 10 and 17 filed an application on 8.9.2010, reporting that respondent nos. 9,7,11,10,12,13,23,6,4 had died in

different times in the year 2006 and 2007. Furthermore, impugned order recorded that process server's report discloses further that respondent nos. 27,30,31,33,45,40,56,57,61,62,64,70,78,79,83,84 and 89 also died. The appellant thereafter, filed an application for directing to deliver interrogatories upon the contesting respondents stating information regarding the name of heirs and representatives of aforesaid deceased Respondents. In reply to the interrogatories, the petitioners herein filed an application praying their inability to answer the interrogatories and to exonerate them from giving reply as to the heirs of the deceased respondents as they are residing elsewhere to earn livelihood. Subsequently, by the impugned order, learned court below recorded that the aforesaid Title appeal has been abated against the said deceased respondents only but the appeal has not been abated as a whole.

Learned counsel for the petitioners submits that the decree dated 30<sup>th</sup> November, 2006 passed by the court below in Title Suit no. 112 of 1997, against which the present appeal is preferred, is joint and indivisible and as such the appeal has been abated as a whole. He further submits that the court below erred in directing the learned lawyer for the contesting Respondents to supply the names and representatives of the deceased respondents as it is unwarranted in law, particularly

when it has been specifically stated in the objection petition about the inability of learned lawyer to know the names and address of heirs and legal representatives. Accordingly, he has prayed for setting aside the order impugned.

Learned counsel for the petitioners, in this context has relied upon two judgments passed in **Papanna and Another vs. State of Karnataka and others (1996) 1 SCC 291** and **Dwarka Prasad Singh vs. Harikant Prasad Singh (AIR 1973 SC 655)**.

On perusal of the judgment and decree which has been assailed in the aforesaid Title Appeal, it appears that the court below was pleased to decree the suit against the defendants as follows:

*“The plaintiffs have the khas possession over the ka schedule mentioned properties by virtue of the registered Patta as per settlement. The kha schedule properties are not jungle and the defendant nos. 1 and 2 have only rent receiving interest over the kha schedule property and they have no other right with the same.”*

In view of the aforesaid judgment and decree, it is clear that the judgment and decree passed in the said suit is indivisible and inseparable. When the contesting Respondents/Petitioners reported the court on 8.9.2010 that the said respondents have died, the court below was pleased to direct the contesting respondents to inform about the names of heirs and their respective

address of the deceased respondents. The respondents expressed before the court about their inability to furnish the details of the legal heirs of the deceased.

In this context, it may be said that order XXII rule 10A casted a duty upon pleader to communicate the court about the death of a party, which in the present case the petitioners have duly complied. Simply because the contesting respondents could not supply the name of the legal heirs and their address to the Appellants/defendants nos. 1 and 2, that does not absolve the appellants from their duty to pray for substitution of the legal heirs of the deceased respondents, within the statutory period.

When the decree is common to all the Respondents and being indivisible, the appeal stands abated as a whole automatically, since the legal representatives of the deceased Respondents have not been brought on record within the statutory period. In the present context, the impugned decree is common to all the Plaintiffs/Respondents, so the court below was erred in observing that the decree has been abated only in respect of the deceased respondents.

In view of above, C.O. 410 of 2018 is allowed and the order impugned is set aside. The Title Appeal, being no. 65 of 2007 has abated automatically as a whole for not substituting the legal heirs of the deceased respondents within the statutory period.

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

**(Ajoy Kumar Mukherjee, J.)**