

2.8.2023
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Ct. no. 652
sb

**C.O. 633 of 2019
with
CAN 3 of 2023**

**Padmavati Investment Limited
Vs.
Bimala Shaw & Ors.**

Mr. Aniruddha Chatterjee
Ms. Sohini Bhattacharya
Mr. Sounak Bhattacharya
Ms. Iram Hasan
Mr. Sanket Sarangi ...for the petitioner

Mr. Prasanta Kr. Pakrashi
Ms. Nasreen Islam
Mr. Avisek Chatterjee
Mr. Sukhen Bar ...for the O.P. no. 1

Mr. Mainak Bose
Mr. Debjyoti Saha
Mr. Vishwarup Acharyya ...for the Applicant
in CAN 3 of 2023

This is an application under Article 227 of the Constitution of India against the order dated 3rd December, 2018 passed by learned Civil Judge (Senior Division), 8th Court, Alipore, South 24 parganas in Title Suit no. 94 of 2000. By the impugned order, learned trial court recorded that the defendant nos. 1 and 5 died intestate but their legal heirs have not been substituted within prescribed period of limitation and as such the suit has abated automatically by operation of law.

The petitioner submits that this is a suit inter alia for declaration that the plaintiff is the absolute owner and possessor of schedule mentioned suit property and also for injunction. In the said suit, it is submitted that the plaintiff came to learn that the learned advocate for defendant nos. 1 and 4 had filed a death report on 20.08.2014 stating that defendant No.1 died on 27th June, 2014. After becoming aware of the said death report, the petitioner took out an application under Order XI rule 1 of the Code of Civil Procedure for a direction upon the learned advocate of defendant nos. 1 and 4 to furnish in writing the particulars of the legal heirs of defendant no. 1 enabling petitioner to take appropriate steps for substitution. Subsequently, the legal heirs of defendant no. 5 also filed an application praying for their substitution.

By the impugned order, learned court below rejected the said applications. In the meantime, during pendency of the present application, it transpired that defendant nos. 1 and 4 have sold their undivided shares to the applicants in CAN 3 of 2023 who also wants to be impleaded in the said suit. It is submitted that the learned court below failed to consider that there was no ground for rejecting the said application since there was no delay in approaching the court by the petitioner. Accordingly, the petitioner has prayed for setting aside the order impugned.

At the time of hearing, learned counsel appearing on behalf of all the parties agreed that for not making application for substitution, in time, if any, suit may abate against concerned defendant(s) but the suit cannot abate as a whole, since right to sue survives. Parties also propose to grant leave to pray for setting aside abatement, if any, before the court below and also in the event of filing any application by intervenor, seeking addition of party, such application may also be directed to be disposed of in terms of law.

In such view of the matter, this revisional application is hereby disposed of with a direction upon the court below that in the event of filing any application for setting aside of abatement in respect of death of any party and also in case of filing any appropriate application by any intervenor seeking addition of parties, the court below will consider such applications along with objections if any and will dispose of the same in accordance with law.

Accordingly, C.O. 633 of 2019 along with CAN 3 of 2023 are disposed of.

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.)