

S/L 30
12.04.2023
Court. No. 12
Sourav

CO 1424 of 2022
With
CAN 2 of 2023

Julmat Ali Sapui
Vs.
Amena Bibi & Ors.

Mr. Sounak Bhattacharya
Mr. Sumitava Chakraborty

...for the petitioner.

Mrs. Shohini Chakraborty
Mr. Intikhab Alam Mina
Ms. Prajaaini Das

...for the opposite party nos. 18 to 20.

Learned advocate for the legal heirs of the revisionist
and learned advocate for the opposite party nos. 18 to 20 are
present.

Affidavit-of-service filed in Court today on behalf of
the petitioner be taken on record.

The application being CAN 2 of 2023 is taken up for
hearing.

In Re: CAN 2 of 2023

Perused the application.

Heard learned advocate for the parties at length.

By filing CAN 2 of 2023, the petitioner has prayed for
substitution of the legal heirs of the deceased petitioner who
died on 09.12.2022. The details of the legal heirs of the
petitioner have been mentioned in paragraph 2 of the instant
application and their addresses are also mentioned in the
cause title of the instant application. Since, the application is
within time, **CAN 2 of 2023** is hereby allowed.

Department is hereby directed to delete the name of the petitioner, Julmat Ali Sapui from the cause title of the instant revisional application and in its place the names and addresses of the legal heirs of the deceased petitioner particulars of whom are given in the cause title of CAN 2 of 2023 be incorporated.

In Re: CO 1424 of 2022

Heard Mr. Bhattacharya, learned advocate for the revisionist and Ms. Chakroborty, learned advocate for the opposite party nos. 18 to 20.

In this revisional application, the order dated April 22, 2022 as passed by the learned Civil Judge (Junior Division) 2nd Additional Court, Alipore, District – South 24 Parganas, in Title Execution Case No. 8 of 1982 has been assailed. By the impugned order, learned trial court allowed the petition filed by the legal heirs of the judgment debtor no. 3 and thus permitted them to contest the said Execution Case. The decree holder felt aggrieved and thus preferred the instant revisional application.

Mr. Bhattacharya, learned advocate for the revisionist in support of the instant revisional application draws attention of this Court to the photocopy of the application as filed by the legal heirs of the judgment debtor no. 3 before the learned trial court in Title Execution Case No. 8 of 1982. Attention of this Court is also drawn to the impugned order. Placing his reliance upon the provisions of Order 21 Rule 106 of the Code of Civil Procedure, it is argued by Mr. Bhattacharya that since in the said application as filed by the opposite party nos. 18 to 20 no date has been mentioned

with regard to their knowledge regarding the pendency of the said Execution Case. Learned trial court ought to have held that the said application is hopelessly barred by law of limitation and thus, the learned trial court ought not to have allowed the petition as filed by the opposite party nos. 18 to 20.

Per contra, Ms. Chakraborty, learned advocate for the opposite party nos. 18 to 20 submits before this Court that since notice of execution was never served upon the opposite party nos. 18 to 20 in the said Execution Case, there cannot be any barr of limitation in filing the application which has been allowed by the learned trial court by the impugned order.

On perusal of the entire materials as placed before this Court, it reveals that admittedly in respect of Title Execution Case No. 8 of 1982, notice was served upon the predecessor-in-interest of the opposite party nos. 18 to 20 who was the judgment debtor no. 3 in Title Execution Case No. 8 of 1982 before the learned trial court. Nothing can be placed before this Court at the time of hearing that after the death of the judgment debtor no. 3, the present opposite party nos. 18 to 20 have been served with notice.

In considered view of this Court, since the opposite party nos. 18 to 20 are the legal heirs of the deceased judgment debtor no. 3, the learned trial court is very much justified in allowing the present opposite party nos. 18 to 20 to contest Title Execution Case No. 8 of 1982 being the legal heirs of the deceased judgment debtor no. 3.

In view of the discussion made hereinabove, this Court finds no illegality and/or irregularity in the impugned order and accordingly, the same is hereby upheld. Consequently, the present revisional application being **CO 1424 of 2022** stands hereby dismissed on contest.

Considering the age of Title Execution Case No. 8 of 1982, learned Executing Court is hereby directed to dispose of the said Execution Case within a period of six months from the date of communication of this order.

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

All parties to act on the server copy of this order duly downloaded from the official website of this Court.

(Partha Sarathi Sen, J.)