

S/L 12
22.03.2023
Court. No. 12
Sourav

**CO 1769 of 2016
With
CAN 3 of 2020**

**Kumari Purabi Nath & Ors.
Vs.
Smt. Indubala Nath & Ors.**

Mr. Sandip Kr. Bhattacharyya

...for the Petitioners.

Mr. Debasis Sur

Mr. A. Patra

Mr. Goutam Debnath

...for the opposite party no. 7.

Both the petitioners and the opposite party nos. 7(i) to 7(iv) are represented by their respective learned advocates. The affidavit-of-service as filed in Court today on behalf of the petitioners be kept with the record.

It reveals that CAN 3 of 2020 as filed by the petitioners has not yet been disposed of and in that regard Assistant Registrar – IV has submitted a report dated 16.12.2022. Perused CAN 3 of 2020 and the aforesaid report of the Assistant Registrar – IV and also perused the supplementary affidavit as filed on behalf of petitioner no. 1. It reveals that by filing CAN 3 of 2020, the petitioners have prayed for substitution of the legal heirs of the opposite party no. 5, particulars of whom have been given in paragraph 6 at page no. 5 of CAN 3 of 2020. In the supplementary affidavit, the petitioners have also disclosed that one Bappa Dutta is the husband of Rimpa Nath, the proposed substituted opposite party no. 5(ii).

In view of such, CAN 3 of 2020 is hereby allowed.

Department is hereby directed to expunge the name of deceased opposite party no. 5, Sri Ajit Nath from the cause title of the instant revisional application and in its place incorporate the name of the opposite party nos. 5(i) and 5(ii), particulars of whom are given in paragraph 6 of CAN 3 of 2020 as well as in the cause title of CAN 3 of 2020.

Department is further directed to incorporate the following after the name 'Rimpa Nath' namely; 'wife of Bappa Dutta'.

From the affidavit-of-service, it reveals that the substituted opposite party nos. 5 (i) and 5 (ii) i.e., Kaberi Nath widow of late Ajit Nath and Rimpa Nath wife of Bappa Dutta have already been served as the notices sent to them returned with the endorsement 'refused' and refusal to accept notice tantamounts to good service.

Such being the position, petitioners are hereby exempted to cause fresh service upon the substituted opposite party nos. 5 (i) and 5 (ii) in this case.

At this stage, the instant revisional application is taken up for hearing in presence of the learned advocates for both sides. Perused the certified copy of the impugned order. Heard learned advocates for the contending parties at length.

The present revisional application is now taken up for passing appropriate order.

Before the learned trial court i.e., in the Court of learned Civil Judge (Junior Division), 5th Court, Howrah in Title Suit No. 29 of 2002, the plaintiff has filed an application under Order 12 Rule 6 of the Code of Civil Procedure on 20.08.2003 praying for passing a judgment on admission

since according to the plaintiff, the contesting defendants in their written statement categorically admitted that the plaintiffs are the absolute owners of Plot No. 41 in entirety measuring 6 sataks and Plot No. 21/8 satak of Bastu land with building thereon and also of Plot No. 35 in Mouza – Duillya. While disposing the said application under Order 12 Rule 6 of the Code of Civil Procedure on contest, learned trial court notices that in the additional written statement, the defendants have denied such contention. Learned trial court has also come to a finding that title cannot be passed by way of admission and thus, rejected the petition under Order 12 Rule 6 C.P.C. as filed by the plaintiff on 20.08.2003 by the impugned order.

In considered view of this Court, the view taken by the learned trial court is perfectly justified inasmuch as an admission of fact cannot confer title in respect of a property upon the plaintiff unless the same is proved in accordance with law.

In view of such, this Court finds no merit in the instant revisional application. Accordingly, the instant revisional application being **CO 1769 of 2016** is dismissed. The impugned order dated 14.03.2016 as passed in Title Suit No. 29 of 2002 by the learned Civil Judge (Junior Division), 5th Court, Howrah is hereby affirmed.

It is, however, made clear that the observation as made hereinabove is purely limited for the disposal of the instant revisional application and learned trial court is hereby directed not to persuade himself with any of the

observation as made hereinabove at the time of disposal of Title Suit No. 29 of 2002 on its merit.

Department is hereby directed to forward a copy of this order to the learned trial court within a week.

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

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

(Partha Sarathi Sen, J.)