

12.7.2023

ct. 236

sk,sl.22

C.O. 1262 of 2014

In the matter of: Shyamal Kr. Pramanik

None is appearing on behalf of the petitioner.

In view of the order dated 13th June, 2023, I am inclined to dispose of this revisional application on merit.

This application under Article 227 of the Constitution of India impeaches the Order No. 36 passed by the learned 2nd Court, Contai, Purba Medinipur in Title Appeal No. 72 of 2013.

By the impugned order, learned Appellate Court was pleased to allow the petition under Order 6 Rule 17 of the Code of Civil Procedure and the Memo of Appeal was amended by incorporating the fact that Smt. Ashrukona Das, defendant no. 13 died on 22nd July, 2008 and the decree was passed against the dead person ignoring the fact that the plaintiff/respondent filed an application under Order 22 Rule 4(4) of the Code of Civil Procedure which was allowed. The Sub-rule (4) of Rule 4 of Order says:-

“(4)The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who having filed it, has failed to appear and contest the suit at the hearing, and judgement may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place”.

Therefore, learned Appellate Court committed jurisdictional error by passing the impugned order at the same time, the impugned order appears to be perverse and is set aside. The revisional application is thus allowed.

Let a copy of this order be sent down to the learned Civil Judge (Senior Division), 2nd Court, Contai, Purba Medinipur for information and necessary action.

(Siddhartha Roy Chowdhury, J)