

17.10.2023
Item No.34
Ct. No. 7
KS

C.O. 3324 of 2023
Smt. Manjula Mitra & Ors.
Vs.
Sri Raju Rajak & Ors.

Mr. Rohit Das
Mr. Soumalya Ganguli
.....For the Petitioners
Mr. Tarak Nath Halder
.....For the O.P. No.1

1. An order dated 18th May, 2023 passed by the learned Civil Judge (Senior Division), Small Causes Court, Sealdah in Title Suit No.46 of 2017 is under challenge in this application. Four plaintiffs had jointly filed a suit for eviction and for cancellation of the agreement against the opposite party nos.1 and 2 herein.
2. During pendency of the said suit, the plaintiff no.4 namely, Mina Chakraborty died. The remaining plaintiffs filed an application under Order 22 Rule 2 of the Code of Civil Procedure specifically contending that by virtue of a deed of family settlement amongst the plaintiffs, the suit property has been exclusively allotted in favour of the plaintiff nos.1 to 3 and the plaintiff no.4 had relinquished the right, title and interest in favour of the remaining plaintiffs. The plaintiff nos.1 to 3 prayed for an order to record the fact of death of the plaintiff no.4 in the records of the title suit. By the order

impugned, the learned Trial Judge rejected such application.

3. The learned advocate appearing for the petitioners submits that upon the death of plaintiff no.4, the right to sue survives upon the plaintiff nos.1 to 3 and since the plaintiff no.4 has died, recording to such effect has to be made in terms of the provisions contained in Order 22 Rule 2 of the Code.
4. Mr. Halder, learned advocate appearing for the opposite parties disputes the execution of the family settlement. He submits that the plaintiff no.4 died leaving behind her daughter and, therefore, such daughter is a necessary party in the suit and she should be substituted in place and stead of the deceased plaintiff no.4.
5. Heard the learned advocates for the parties and perused the materials placed.
6. The plaintiffs have claimed that the plaintiff no.4 had relinquished all her right, title and interest in favour of the plaintiff nos.1 to 3 by virtue of a deed of family settlement and, therefore, the right to sue survives only upon the plaintiff nos.1 to 3. It is not in dispute that the plaintiff no.4 has died leaving behind her daughter, but the mere fact that the plaintiff no.4 has an heir does not necessarily mean that the right to sue survives upon the said heir of the plaintiff no.4 in view of the specific stand

of the plaintiffs that the suit property has been allotted exclusively in favour of the plaintiff nos.1 to 3.

7. Plaintiff is the master of the suit and has a right to decide as to how they shall carry on with the suit. The heirs of the plaintiff no.4 has also not come forward claiming her right to be substituted in place and stead of the deceased plaintiff. This Court, therefore, directs the learned Court below to cause an entry in the records of the title suit about the death of the plaintiff no.4 and the suit shall proceed at the instance of the plaintiff nos.1 to 3.
8. This order shall not, however, prevent the defendants/opposite parties from raising any plea as to the maintainability of the suit and/or from raising any objection against the deed of family settlement in accordance with law.
9. With the above observations and directions, C.O. 3324 of 2023 stands disposed of.
10. There shall be, however, no order as to costs.
11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)