

5.2.2024
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Ct. no. 652
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C.O. 373 of 2019

**Rituparna Sarbajna
Vs.
Smt. Bhavna Chatterjee**

Mr. Saidur Rahaman for the Petitioner

This application has been directed against the order no. 18 dated 7th December, 2018 passed by the learned District Judge, Hooghly at Chinsurah in MAT suit no. 375 of 2015. By the impugned order, the court below rejected the petitioner's application under Order XXII rule 3 of the Code of Civil Procedure.

Petitioner submits that the marriage of the opposite party was solemnised with Hirak Sarbajna according to the Hindu Rites and Customs. It is alleged in the plaint that the opposite party voluntarily left her matrimonial home without informing her husband and did not come back to her matrimonial home. In such compelling circumstances, the said husband Hirak Sarbajna was compelled to institute the present matrimonial suit praying for decree of divorce against the opposite party on the ground of desertion. The opposite party herein as wife entered appearance in the suit and filed written statement denying material allegations.

Petitioner further submits that since the proceeding of the suit being MAT suit no. 375 of 2015 became a lengthy procedure, the opposite party in order to expedite the separation, filed another Matrimonial suit being MAT 178 of 2017 under Section 13(B) of the Hindu Marriage Act, 1955. The petitioner further submits that from the petition filed under Section 13(B) of the Hindu Marriage Act, it appears that the opposite party has withdrawn herself from her matrimonial home since 29.3.2013 and since then she has been residing separately in her father's house and she had no relation with her aforesaid husband, Hirak Sarbajna.

Petitioner herein also contended that during pendency of the aforesaid two suits, the aforesaid husband of the opposite party namely, Hirak Sarbajna died on 15.9.2017 leaving behind the petitioner herein as the only legal heir and representative having no issue out of the wedlock and as opposite party withdrawn herself from matrimonial relationship.

Now in order to come to a conclusion in the aforesaid matrimonial suit and to avoid further complication, the petitioner herein being the sister of deceased Hirak Sarbajna, wants to proceed with the present suit and for which she filed aforesaid application under Order XXII rule 3 of the Code. However, learned court below after hearing the parties was pleased to dismiss the petitioner's application

under Order XXII rule 3 of the Code with the observation that the right to sue no longer survives upon the present petitioner and as such he has been pleased to dismiss the suit.

Being aggrieved by that order, learned counsel for the petitioner submits that the court below has erred in law and in fact, in interpreting the law laid down by Supreme Court in AIR 1997 SC 35 and the petitioner has every right to be substituted in the said suit and the said judgment passed by the Apex court is clearly applicable in the present context and accordingly, he prayed for setting aside the order impugned.

I have considered the submissions made by the petitioner. It appears from the record that the aforesaid matrimonial suit was filed only with a prayer for decree of divorce against the respondent by dissolving the marriage between the parties. It is admitted position that during pendency of the suit, said husband/plaintiff of the said suit, Hirak Sarbajna died on 15.9.2017. When a suit filed by the plaintiff relates to enforcement of rights intimately connected with his individuality, the right to sue does not survive on his death and the suit abates as a whole on the death of plaintiff. This is based on maxim “action personalis moritur cum persona” i.e. a personal right of action dies with the person. Accordingly, right to continue with the suit does not survive upon the present petitioner who has claimed

herself as a sister of the deceased husband. The case law cited by the petitioner reported in AIR 1997 SC 35 is factually distinguishable. I do not find any illegality or impropriety in the order impugned, since the suit has abated as a whole with the death of the husband/plaintiff.

C.O. 373 of 2019 is accordingly dismissed.

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.)