

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 615 of 2024

(Assigned)

Smt. Ratna Das & Ors.

Vs.

Smt. Manju Biswas & Ors.

With

C.O. 616 of 2024

(Assigned)

Smt. Ratna Das & Ors.

Vs.

Mihir Kumar Konar & Ors.

With

C.O. 617 of 2024

(Assigned)

Smt. Ratna Das & Ors.

Vs.

Smt. Chhanda Koner & Ors.

For the petitioners
in C.O. No. 615 of 2024,
C.O. No. 616 of 2024 &
C.O. No. 617 of 2024

:Mr. Susenjit Banik, Adv.
Mr. Mrinal Saha, Adv.

For the Opposite Party no. 1
in C.O. No. 616 of 2024 &
C.O. No. 617 of 2024

:Mr.Md. Nure Zaman, Adv.

For the Opposite Party nos. 3 to 13 :Mr. Amit Singh, Adv.
 in C.O. No. 615 of 2024,
 C.O. No. 616 of 2024 &
 C.O. No. 617 of 2024

Heard On :08.07.2024, 05.08.2024, 19.08.2024,

Order On :20.09.2024

Bibhas Ranjan De, J. :

1. All the three revision applications having identical issue and arising out of the self same cause of action shall be disposed of via this common judgment.

Backdrop:-

2. One Dasarathi Das (since deceased)/father of the opposite party no. 13 & 14 herein in respect of the present revision applications and the predecessor-in-interest of the petitioners qua all three revision applications & opposite party no 3. to 12, was the original owner of 1/4th undivided share of plot of land admeasuring about 89 decimals situated at Dag No. 133, P.S.– Kalna, Mouja-Madhuban bearing J.L. No. 166/Khatiyani No. 111. District-Burdwan. Opposite party no. 2 in respect of the

revision applications was also the owner of undivided half portion of the land in the subject plot.

3. The opposite party no. 13 & 14, the said predecessor in interest of the petitioners and the opposite party no. 3 to 12 after demise of the said Dasarathi Das inherited the landed property along with the opposite party no. 2, who subsequently filed a partition suit of the said property pending final decree.
4. During the pendency of the said partition suit, the common opposite party no. 2 by virtue of three separate deeds of conveyance sold her undivided share of the subject plot of land to the opposite party no. 1, namely Smt. Manju Biswas qua C.O. No. 615 of 2024, the opposite party no. 1 namely Sri. Mihir Kumar Konar qua C.O. No. 616 of 2024 & the opposite party no. 1 namely Smt. Chhanda Konar qua C.O. No. 617 of 2024. Thereafter, the said opposite party no. 13 & 14 along with her other sisters i.e. Bimala Das (since deceased)/ predecessor-in-interest of the petitioners herein and opposite party nos. 3 to 12 jointly filed an application under Section 8 of the West Bengal Land Reforms Act, 1955 seeking pre-emption on the ground of co-sharer ship vide Misc. Case Nos. 33 of 2001, 04 of 2001 & 34 of 2001 respectively.

- 5.** During pendency of the pre-emption proceeding one of the pre-emptors namely Bimala Das/ predecessor-in-interest of the petitioners herein expired. Said Bimala Das had three sons and one daughter out of which one of her sons pre-deceased her. The other two sons/opposite party no. 11 & 12 jointly filed an application with a prayer for substitution in the said pre-emption proceeding. The Ld. Trial Judge vide order dated December 03, 2022 was pleased to substitute the said opposite party no. 11 & 12 in place of the deceased mother. The other heirs of Bimala Das (her daughter & the heirs of her deceased son), were out of station at the time of her death. Therefore, they were not able to file application for substitution in the said pre-emption proceeding.
- 6.** All the three applications preferred by the petitioners were rejected by the Ld. Trial Judge on the ground that since the other heirs of the deceased Bimala Das i.e. opposite party no. 11 & 12 at the time of substitution did not disclose the names and address of the present petitioners in their application and also on the ground of delay in filing substitution application by the petitioners vide order nos. 46 dated 24.01.2024, 147/1 dated 18.01.2023 & 141 dated 17.03.2023 qua the revision applications respectively.

7. Being aggrieved by and dissatisfied with the said orders of rejection, the petitioners have preferred these revision applications.

Argument:-

8. Ld. Counsel, Mr. Susenjit Banik, appearing on behalf of the petitioners qua revision applications has contended that petitioners being co-sharers of the subject property are entitled to be substituted in all three cases under Section 8 of the WBLR Act, 1955 as other legal heirs of Bimala Das (since deceased) were already on record by way of substitution. It is submitted that the substitution applications filed by the petitioners cannot be said to be barred by any limitation and also not liable to be abated in terms of limitation.
9. In support of his contention, Mr. Banik relied on a couple of cases namely:-
- ***Mahabir Prasad, vs. Jage Ram and others*** reported in ***1971 0 AIR(SC) 742***
 - ***Dolai Maliko and others vs. Krushna Chandra Patnaik and others*** reported in ***1967 0 AIR (SC) 49.***
10. Ld. Counsel, Mr. Md. Nure Zaman, appearing on behalf of the opposite party no. 1 in connection with C.O. no. 616 of

2024 & C.O. No. 617 of 2024 has highlighted the ground of limitation and submitted that all the three substitution applications were filed by the petitioners well after the demise of said Bimala Das i.e. on 16.11.2020.

11. In support of his contention, Mr. Zaman has referred the following case of ***Balwant Singh vs. Jagdish Singh & Ors. reported in (2010) 8 SCR 597***

Analysis:-

12. Before going into the nitty-gritties of the revision applications, I think it would be feasible to first discuss the ratio of the referred cases on behalf of the parties which are as follows:-

13. In ***Mahabir Prasad (supra)*** the Hon'ble Apex Court laid down that in a case where the heirs to be substituted are already on record, substitution application within the prescribed period of limitation is not necessary. There can be no abatement of the suit merely because no application for impleading the other heirs and legal representatives of the deceased has been made within the period of limitation.

14. In ***Dolai Maliko (supra)*** the Hon'ble Supreme Court remarked that even where the plaintiff or the appellant has died and all his heirs have not been brought on the record

because of oversight or because of some doubt as to who are his heirs, the suit or the appeal, as the case may be, does not abate and the heirs brought on the record fully represent the estate unless there are circumstances like fraud or collusion.

15. In ***Balwant Singh (supra)*** The Hon'ble Apex Court dealt with an issue of death of the sole petitioner and admittedly no steps were taken to bring on record the legal representatives of deceased for a considerable period of 778 days, which is, absolutely not at all identical with the issue of impleading remaining co-sharers in addition to other subsisting co-sharers, in the cases dealt with by this Court. Therefore, the observation made by the Hon'ble Apex Court in the case of ***Balwant Singh (supra)*** cannot be said to be squarely applicable to the cases at hand.

16. The contentious issue in all the revision applications at hand is that whether the substitution application filed by the petitioners qua revision applications are liable to be tested by the provisions of law of limitation or abatement by operation of law.

17. The principles established for Substitution affirm that the rights of co-sharers are protected even in the absence of all parties, provided that the remaining parties can adequately

represent the interests of the deceased. Legal representatives can be substituted even after the limitation period if the cause of action survives, and the Court retains the discretion to ensure that all necessary parties are included for a fair adjudication of the case.

18. In the instantaneous cases admittedly one of the co-sharers namely Bimala Das died living behind her legal heirs i.e. her three sons and one daughter. Amongst them one of her son namely Tarapada Das pre-deceased her. The other two sons namely Sankar Das and Shibpada Das/ opposite party no. 11 & 12 herein have admittedly been added by way of substitution in place of their deceased mother and the petitioners herein subsequently filed the substitution applications beyond the period of limitation on the ground that they were out of station for an excursion when the opposite party no. 11 & 12 were substituted as the legal heirs of said Bimala Das.

19. It is settled proposition of law that where some co-sharers are already on record, the remaining co-sharers can be impleaded as parties to the suit. The Courts have recognized that the absence of some co-sharers does not necessarily lead to the abatement of the suit, especially if the remaining parties

can adequately represent the interests of the absent co-sharers.

20. Therefore, in my humble opinion, it is permissible to implead remaining co-sharers in a pre-emption case even if the application for substitution is made beyond the limitation period, provided that the rights of the parties are not compromised.

21. In the aforesaid view of the matter, the prayer of the petitioners herein for substitution stands allowed. Their names be incorporated in the cause title of the Miscellaneous (Pre-emption) cases accordingly. As a sequel, the orders assailed in the revision applications stand set aside.

22. Accordingly, the revision applications being no. C.O. 615 of 2024, C.O. 616 of 2024 & C.O. 617 of 2024 stand disposed of.

23. Considering the long pendency, Ld. Trial Judge is requested to take note of the necessary changes and dispose of all three Miscellaneous (Pre-emption) cases within 6 months from the date of communication of this order without affording any unnecessary adjournment to either of the parties.

24. Interim order, if there be any, stands vacated.

- 25.** Connected applications, if there be, also stand disposed of accordingly.
- 26.** All parties to this revisional applications shall act on the server copy of this order downloaded from the official website of this Court.
- 27.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]