

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1784 of 2023

Amarendra Nath Panda (since deceased) being
represented by his legal heirs Smt. Kanan Panda & Ors.

Vs.

Mrinal Kanti Panda & Ors.

Mr. Raghunath Das

Ms. Monalisa Das

... For the petitioners

1. Affidavit of service filed in Court today is taken on record.
2. In spite of service, none appears on behalf of the opposite parties.
3. Challenge in this revisional application is the order dated 10th April, 2023 and the order dated 3rd May, 2023 passed by the learned Civil Judge (Junior Division), 1st Additional Court, Contai, Purba Medinipur, in connection with Title Suit No.36 of 2017.
4. By the order dated 10th April, 2023, the learned Judge abated the suit on account of death of the sole plaintiff and the defendant no.1 on the ground that no substitution took place on account of death of the plaintiff and the defendant no.1, i.e., Amarendra Nath Panda and Ananta Kumar Panda, respectively.
5. On behalf of the plaintiff/petitioners herein, one application under Section 151 of the Code of Civil

Procedure was filed with a prayer for recalling the order dated 10th April, 2023 which was totally perverse. The said application under Section 151 of the Code of Civil Procedure was also rejected on the ground that after passing the order impugned, the learned Trial Court became *functus officio*.

6. Mr. Raghunath Das, learned counsel, appearing on behalf of the petitioners, has submitted that after demise Ananta Kumar Panda, the sole defendant, his legal heirs were substituted by the order no.42 dated 10th March, 2000.

7. On careful perusal of the said order dated 10th March, 2000, it appears that legal heir of Ananta Kumar Panda, since deceased, was substituted.

8. Learned counsel appearing on behalf of the plaintiff/petitioners has further submitted that after the demise of Amarendra Nath Panda on 8th August, 2013, one substitution application was filed before the Court on 7th September, 2013 as it appears from the order dated 7th September, 2013.

9. Therefore, the substitution application in respect of Amarendra Nath Panda has already filed before the Court on 7th September, 2013 i.e., within statutory period and from then on it is pending.

10. In the aforesaid view of the matter, I fail to make me understand that what prompted the learned Trial

Court to pass the impugned order dated 10th April, 2023 recording an order of abatement in consequence of death of the sole plaintiff and the defendant no.1, i.e., Amarendra Nath Panda and Ananta Kumar Panda, respectively.

11. As a sequel, both the orders dated 3rd May, 2023 and 10th April, 2023 passed in Title Suit No.36 of 2017 stand set aside.

12. The learned Trial Judge is requested to dispose of the substitution application dated 7th September, 2013 within one week after the ensuing Christmas vacation.

13. The learned Trial Judge is also requested to dispose of the Title Suit No.36 of 2017 as expeditiously as possible, without giving any unnecessary adjournment to either of the parties unless any unavoidable situation demands.

14. With the aforesaid observation, the revisional application, being CO 1784 of 2023, stands disposed of.

15. Interim order, if any, stands vacated.

16. Connected application, if any, also stands disposed of.

17. Learned counsel appearing on behalf of the petitioners is at liberty to bring this order to the notice of the learned Civil Judge (Junior Division), 1st Additional Court, Contai, Purba Medinipur, forthwith.

18. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)