

13.03.2024
Item No.16
Ct. No. 7
KS

C.O. 3380 of 2023
Kishore Nag & Ors.
Vs.
Swapan Nag & Ors.

Mr. Jayanta Das
Ms. Soumita Ghosh

.....for the Petitioners

1. It has been submitted by the learned advocate for the petitioners that the heirs of the original defendant no.1 have been duly served.
2. As prayed for by the learned advocate for the petitioners, leave is granted to the petitioners to file the affidavit of service in course of this day.
3. In spite of notice, none appears to oppose this revisional application.
4. The decree holders in a suit for partition has filed this application under Article 227 of the Constitution of India challenging a judgment and order dated April 28, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Sadar, Paschim Medinipur in J. Misc. Case No.68 of 2016.
5. By the impugned judgment and order, the J. Misc. Case No.68 of 2016 was allowed on contest thereby setting aside the final decree, which was passed *ex parte*.
6. Learned advocate appearing for the petitioners submits that the final decree was passed in a suit for partition on 1st April, 2008. The heirs of the deceased original defendant

no.1 filed an application under Order 9 Rule 13 of the Code of Civil Procedure only in the year 2016 i.e. long after the final decree was passed. He further submits that in spite of service of summons, the original defendant no.1 did not contest the suit for partition, as a result of which, the preliminary decree was passed *ex parte* against the defendant no.1. Thereafter, the defendant no.1 also did not contest the final decree proceedings and, therefore, the learned Judge of the Court below was justified in passing the final decree for partition *ex parte* against the defendant no.1.

7. After going through the materials on record, this Court finds that the learned Trial Judge has noted that his predecessor in office in an order being No.81 dated 21st August, 2008 had observed that the original defendant no.1 viz. Surendra Nath Nag had died on 3rd January, 2006. It was further recorded therein that the substitution application, which was filed within the statutory period, was not moved by the plaintiffs for which the same remained pending.
8. The learned Judge further observed that the final decree was passed without impleading the legal heirs of the defendant no.1. On the basis of such factual finding, the learned Trial Judge was pleased to allow the application under Order 9 Rule 13 of the Code of Civil Procedure. It is well settled that

a decree passed against the dead person is a nullity as the same was passed without giving any opportunity of hearing to the heirs of the said deceased.

9. The impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.
10. Considering the fact that the partition suit is of the year 1989 and the preliminary decree was passed in the year 1991, this Court is of the considered view that a direction is to be passed upon the learned Court below to conclude the final decree proceedings within a specified time frame.
11. Accordingly, C.O. 3380 of 2023 stands disposed of by requesting the learned Civil Judge (Junior Division), 1st Court at Sadar, Paschim Medinipur to conclude the final decree proceedings as expeditiously as possible, but preferably on or before the end of June, 2024 without granting any unnecessary adjournments to either of the parties.
12. There shall be, however, no order as to costs.
13. 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.)

