

May 01, 2024
ARDR (10)

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction**

C.O. 19 of 2024

Dendup Dupka
Vs.
Sakuntala Rai & ors.

Adv. Saumyajyoti Dutta,
Adv. Manotosh Bhowmick,
Adv. Gopal Sah,

...for the petitioner.

Adv. Prajwal Gurung,
Adv. Jayant Kumar Singh,

for the O.P. no.1.

Heard learned counsels for the parties.

The petitioner has assailed the order passed by the learned Civil Judge (Senior Division) Jalpaiguri on 24th November, 2023 in Title Suit no. 14 of 2022, whereby the learned trial Court has allowed the application made by the defendant/petitioner under Order XXII rule 4 of the Code of Civil Procedure.

Learned counsel for the petitioner submits that though the learned trial Court has observed in the order impugned that “veracity of the statements made by the plaintiff regarding the names of the legal heirs of the deceased defendant can be ascertained only after summoning the defendant no.1 and the said Sheela Sherpa”, the learned trial Court has allowed the application under Order XXII rule 4 of the Code without issuing summons upon the said persons. Placing reliance on the authority in Jaladi Sugana (Dead) through L. Rs. vs. Satya Sai Central Trust &

ors. reported in 2008 AIR SCW 4733, learned counsel submits that the learned trial Court ought to have taken recourse to the provisions laid down under Order XXII rule 5 of the Code in order to ascertain the legal heirs of the deceased defendant no.4.

Per contra, learned counsel for the opposite party no.1 submits that there are several documents in his possession to suggest that the defendant no.1 in the suit and Sheela Sherpa are the legal heirs of the deceased defendant. Learned counsel further submits that some of such documents are already before the learned trial Court and he intends to submit other documents before the Court.

It is clearly envisaged under Order XXII rule 5 of the Code that where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or deceased defendant, such question shall be determined by the Court.

In the case in hand, the defendant no.4 in the suit has expired and plaintiffs/opposite parties have submitted before the learned trial Court that the defendant no.1 and Sheela Sherpa are the legal heirs of the deceased defendant. Such contention has been denied and disputed by the defendant/petitioner who asserts that none of these persons are the legal heirs of the deceased defendant. Since there is a dispute between the parties with regard to the legal heirs of the

deceased defendant, learned trial Court ought to have taken recourse to the provisions laid down under Order XXII rule 5 of the Code in order to determine such issue. Also, the order impugned records contradictory statements to the effect that on one hand the learned trial Court said that the defendant and Sheela Sherpa need to be summoned in order to determine the veracity of the statements made by the plaintiff therein and on the other hand, disposed of the application without issuing such summons.

In view of the above, this Court is inclined to hold that the order impugned is required to be set aside and further opportunity ought to be granted to the parties to substantiate their respective contentions.

Accordingly, the application, being C.O. 19 of 2024 is allowed.

The order impugned dated 24th November, 2023 passed by the Civil Judge (Senior Division) Jalpaiguri in Title Suit no. 14 of 2022 is set aside.

The learned trial Court is directed to reconsider the application under Order XXII rule 4 of the Code upon taking recourse to the provision laid down under Order XXII rule 5 of the Code.

Both the parties are at liberty to produce relevant documents in support of their respective

contentions before the learned trial Court at the time of hearing.

There shall however, no order as to costs.

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

(Suvra Ghosh, J.)