

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 455 of 2025

Arup Nath Bhattacharyya

Vs.

Kamalendu Sekhar Sinha & Ors.

For the Petitioner

: Mr. Biswaroop Bhattacharya, Adv.
Ms. Sayani Das, Adv.
Mr. Arya Bhattacharyya, Adv.

Heard on

: 13/06/2025

Judgment on

: 13/06/2025

Hiranmay Bhattacharyya , J. :

1. This application under Article 227 of the Constitution of India is at the instance of the defendant Nos.1 and is directed against an order being No.133 dated December 18, 2024 passed by the learned Judge, 13th Bench, City Civil Court at Calcutta in Title Suit No.1509 of 2012.
2. By the order impugned the application filed under Order 22 Rule 2 of the Code of Civil Procedure by the plaintiff for substitution of the heirs and successors of the deceased plaintiff No.3 stood allowed.

3. Mr. Bhattacharya, learned advocate appearing for the petitioner submits that the plaintiff No.3 claimed to be a licensee in respect of the suit property. He submits upon the death of the plaintiff No.3 his heirs and successors cannot inherit any right qua licensee as the licence is not heritable. In support of such contention Mr. Bhattacharya placed reliance upon a decision of a co-ordinate Bench in CO 3544 of 2008 dated August 19, 2010.

4. Girija Ranjan Saha along with two others filed a suit for declaration that they are in possession of the portion of the suit room under irrevocable licence and for permanent injunction restraining the defendants from making any attempt to take forceful possession of the suit room. During pending of the said suit, the plaintiff No.3, namely, Girija Ranjan Saha died. After the death of the 3rd plaintiff, an application for substitution was filed, which stood allowed by the impugned order.

5. Order 22 Rule 3(1) of the Code of Civil Procedure states that where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone and the right to sue survives, the Court on an application made in that behalf, shall cause the legal representatives of the deceased plaintiff to be made a party and shall proceed with the suit.

6. A co-ordinate Bench in C.O. 3455 of 2008 held that even if the legal heirs of the licensee cannot inherit any right qua licensee from his

predecessor on the death of the licensee, but still then it cannot be held that the plaintiff's right to sue against them does not survive.

7. The co-ordinate Bench in CO 3544 of 2008 held thus:-

“Here is the case where a suit for eviction was filed against the defendant on revocation of licence. Since the defendant did not vacate the suit premises even after revocation of the licence, the suit was filed for his eviction. Once the licence is revoked by notice, the relationship of licensor and licensee stands terminated. As such, from the date of such termination the licensee became an unauthorized occupant of the suit premises. As such, though it is true that the heirs and legal representatives of the defendant did not inherit any interest qua licensee from his father, but the plaintiff's right to sue the legal representatives of the deceased unauthorized occupant for recovery of possession from them, no doubt, survives.”

8. A licensee claiming to be in possession of an immovable property alleging a threat or attempt to dispossess him from such property approached the Court for protecting possession. It is well-settled that licence is not a heritable right. Even if the contention of Mr. Bhattacharya is accepted that the licence is not an irrevocable one and the heirs and legal representatives of the deceased plaintiff No.3 did not inherit any interest qua licence from their predecessor, the right of the legal representatives of the deceased plaintiff to restrain the defendants from dispossessing them without due process of law, no doubt survives.

9. The decision of the co-ordinate Bench does not come to the aid of the petitioner but the same supports the ultimate conclusion arrived at by the learned trial judge.

10. The learned trial judge was right in allowing the application for substitution.

11. This Court is not inclined to interfere with the order. Accordingly, CO 455 of 2025 stands dismissed.

12. It is however made clear that it will be open to the petitioner herein to raise all points in the pending suit. The observations made hereinbefore are only for the purpose of supporting the conclusions arrived at by this Court.

13. There will be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)