

18.03.2025
Item No.03
DL, Ct.19
A.J.

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

C.O. 534 of 2025

Smt. Kajal Samanta & Ors.

-Vs-

Sri Basudeb Bhowmik & Ors.

Mrs. Shohini Chakraborty,
Ms. Prajaaini Das.
.....for the petitioners.

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Anirban Saha Roy.
.....for the opposite parties.

The defendants in a suit for eviction of trespassers are the petitioners of the instant application under Article 227 of the Constitution of India which is directed against order dated December 07, 2024 passed by the learned District Judge, Purba Medinipur in Misc. Appeal No. 24 of 2024 thereby affirming the order dated April 26, 2024 passed by the Additional Court of the learned Civil Judge (Junior Division) at Tamluk, District : Purba Medinipur in Judicial Misc. Case No. 56 of 2019.

One Binapani Sasmal (since deceased) had filed the connected suit being Title Suit No.100 of 2006 before the Additional Court of the learned Civil Judge (Junior Division), District- Purba Medinipur. The said suit was dismissed for default on November 07, 2019.

The deceased plaintiff took out an application for restoration of the suit under Order IX Rule 9 of the Code of Civil Procedure, registered as J Misc. Case No. 56 of 2019 but the plaintiff had died during the pendency of the said misc. case. The son of the plaintiff

namely Rajib Kumar Sasmal and her married daughter namely Sunayana Das Sasmal were substituted in the said misc. case.

The said heirs and legal representatives of the plaintiff, during the pendency of the said misc. case, have transferred the suit property in favour of the opposite party nos.1 and 2. The said opposite parties took out an application under Order XXII Rule 10 of the Code for their addition in the said misc. case as petitioners.

The learned Trial Judge by the order dated April 26, 2024 had allowed the said application holding *inter alia* that the opposite party nos. 1 & 2, being the transferees *pendente lite* have interest over the suit property, as such are the necessary parties in the said misc. case.

The petitioners had preferred the connected appeal being Misc. Appeal No.24 of 2024. The learned District Judge, Purba Medinipur by the impugned order dated December 07, 2024 has dismissed the said appeal, thereby has affirmed the judgment and order of the learned Trial Judge.

Mrs. Chakraborty, learned Advocate for the petitioners submits that in a proceeding under Order IX Rule 9 of the Code, the plaintiff is required to prove that she was prevented by sufficient cause from appearing before the Court when the suit was called on for hearing, the transferees *pendente lite* are not in a position to meet the said requirement of the said

provision of the Code, as such, cannot maintain an application under Order IX Rule 9 of the Code, therefore, their addition in the said misc. case is unwarranted.

Mr. Bhattacharya, learned Advocate for the opposite party nos. 1 & 2, refuting the submission of Mrs. Chakraborty submits that the obligation of the transferees *pendente lite* to satisfy the Court regarding the non-appearance of the plaintiff could very well be discharged by producing evidences, if necessary, by citing the heirs and legal representatives of the deceased plaintiff as witnesses in the misc. case. He further submits that how the transferees *pendente lite* would satisfy the Court regarding the non-appearance of the plaintiff is not a relevant consideration in granting leave under Order XXII Rule 10 of the Code.

Heard the learned Advocate for the parties, perused the materials-on-record.

The devolution of interest in favour of the opposite party nos.1 & 2 in respect of the suit property is not in dispute.

The Courts below have exercised discretion in granting leave to the transferees *pendente lite* to continue with the suit against the petitioners, the exercise of such discretion does not appear to be arbitrary and/or capricious inasmuch as the transferees *pendente lite* would not be in a position to meet the requirement of Order IX Rule 9 of the Code is no consideration in granting the said leave, particularly

when notwithstanding grant of such leave, the substituted petitioners would remain on record of the said misc. case.

In view of the discussion made above, this Court does not find any reason to interfere with the order impugned.

C.O. 534 of 2025 is dismissed without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official website of the Court.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)