

27.03.2025
SL No.157
Court No.22
S.Gayen

CO 856 of 2023

**Rabindra Nath Bera @ Rabindra Bera
Versus
Kartick Bera & Ors.**

Mr. Tanmoy Basu
Mr. Manoj Adak

...for the Petitioner

1. The instant revisional application has been filed challenging the order dated 25th November, 2022 passed in Title Suit No. 73 of 2021, wherein the learned Civil Judge (Senior Division), Chandernagore at Hooghly allowed the application under Order 22 Rule 4 of the Code of Civil Procedure filed on behalf of the plaintiff for substitution of legal heirs of defendant No.13, Biswanath Bera who died on 5th June, 2021.
2. Learned counsel appearing on behalf of the petitioner has submitted that the application under Order 22 Rule 4 of the Code of Civil Procedure was filed for substitution of legal heirs of deceased defendant No.13, Biswanath Bera who died on 5th June, 2021, whereas the suit was filed on 10th June, 2021. In support of his contention, the learned counsel referred to the first order dated 10th June, 2021 passed by the learned Trial Judge when the suit was filed as well as the case status taken out from website.

3. In this regard, learned counsel appearing on behalf of the petitioner submitted that prior to filing of the suit, Biswanath Bera, defendant No.13 died. Therefore, the question of substitution of legal heirs does not arise. That apart, learned counsel has further drawn my attention to the cause title of the plaint wherein, son of the deceased defendant was shown as plaintiff No.7.
4. From that point of view, according to the learned counsel appearing on behalf of the petitioner, it cannot be said that the plaintiff had no knowledge about the death of defendant No. 13, Biswanath Bera.
5. I am in full agreement with the view expressed by the learned counsel appearing on behalf of the petitioner that the provision of Order 22 Rule 4 of the Code of Civil Procedure can only be applied in case of death of several defendants or sole defendant, when a person dies prior to filing of a suit, he cannot be added as defendant in the suit. When the death of Biswanath Bera was well-known to his son who is plaintiff No. 7, he ought not to have been made a party to the suit.
6. Regard being had to the above, the order impugned shows the serious infirmity in as much as the learned Trial Judge did not consider the date of filing

of the suit which is after death of the defendant No.13, Biswanath Bera.

7. Thus, the order impugned in this revisional application being not sustainable in law, stands set aside.
8. In the aforesaid view of the matter, the instant revisional application stands disposed of.
9. Interim order, if any, stands vacated and connected application, if any, also stands disposed of accordingly.
10. The parties are at liberty to intimate the order to the learned Trial Judge for information.
11. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.
12. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)