

D/L.173
September 23, 2025.
MNS.

CO No. 1288 of 2025

Prasenjit Sen and others
-vs-
Saraswati Devi Jaiswal and others

Mr. Anirban Roy

...for the petitioners

1. Despite service, none appears for the opposite parties.
2. The affidavit-of-service, along with the unserved envelopes filed in Court today, be kept on record.
3. It appears from the envelopes that the postal endorsement on the envelopes is "unclaimed", which tantamounts to good service.
4. In any event, in view of the innocuous nature of the order sought by the petitioners, further service on the opposite parties is deemed unnecessary.
5. The petitioners obtained a decree in a suit for recovery of possession. From the said decree, an appeal has been preferred by the opposite parties.

6. During pendency of the appeal, an application was made under Section 152 of the Code of Civil Procedure (in short “the Code”) by the plaintiffs/petitioners before the trial court seeking an innocuous rectification of the trial court’s decree to the effect that the name of Bishnu Chandra Sen, the plaintiff no. 1 (since deceased), was sought to be deleted. Prior to passing of the trial court’s decree, an application for substitution of the heirs of late Bishnu Chandra Sen, who were already on record (the present petitioners) and whose names had already been recorded in the trial court’s decree, was allowed. However, the deletion of the name of the deceased first plaintiff was erroneously not reflected in the decree.

7. By the application under Section 152 of the Code, the plaintiffs/petitioners merely sought the deletion of the name of the said deceased person, the substitution in connection with whom had already been allowed by the trial court prior to the decree, as the heirs of the said deceased were already on record.

8. By the impugned order, the trial court refused such correction on the ground that an appeal is pending against the decree.
9. Apart from the fact that the pendency of an appeal itself does not operate as a stay and in any event, the correction sought is a natural corollary of the earlier order passed by the trial court itself and does not affect or curtail the substantive rights of any of the parties, an order of the appellate court dated August 19, 2025 is also produced by learned counsel for the petitioners, which indicates that the concerned Division Bench taking up such appeal, that is, FA No. 30 of 2025, granted liberty to the plaintiffs/respondents to apply for correction of the decree afresh as the pendency of the appeal may not stand in the way of carrying out the correction in the decree.
10. A copy of the order of the appellate court, handed over in Court today, be also kept on record.
11. In view of the above, the learned trial court acted without jurisdiction in refusing the prayer for deletion made in the

application under Section 152 of the Code of the plaintiffs/petitioners.

12. Accordingly, CO No. 1288 of 2025 is allowed, thereby setting aside Order No. 78 dated January 31, 2025 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta, in Title Suit No. 1856 of 2012 and directing the trial court to ensure that the necessary rectification of the trial court's decree, by deleting the name of the deceased plaintiff no. 1, Bishnu Chandra Sen, is effected at the earliest, preferably within fourteen working days from the date of communication of this order to the trial court.

13. There will be no order as to costs.

14. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

(Sabyasachi Bhattacharyya, J.)