

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2322 of 2022

Maya Sharma
Vs.
Mayna Koiri & Ors.

Mr. Arijit Sarkar
Ms. Prajaaini Das
... For the petitioner

Mr. Sabyasachi Mukherjee
Mr. Mukesh Khanna
Mr. Mrinmay Nandy
Ms. Ankita Nandi
Mr. Biswajit Mukherjee
Mr. Kiran Mullick
Ms. Swastika Saha
Mr. Shah Md. Umer Edue Sadhique
... For the opposite parties

1. Challenge in this revisional application is the order dated 8th June, 2022 passed in connection with Title Suit No.576 of 2013 wherein the learned Civil Judge (Senior Division), First Court at Barasat, North 24-Parganas, refused an application under Section 151 of the Code of Civil Procedure (in short, 'CPC') whereby the plaintiff/petitioner made a prayer for recalling the order dated 1st December, 2021 which was passed rejecting an application under Order XXII Rule 4 of the CPC with a prayer for substitution of the legal heirs of the defendant no.6, since deceased. One application for substitution under Order XXII Rule 4 of the CPC was filed by the plaintiff after demise of the defendant no.6 on 25th

August, 2021 with a prayer for substitution of his legal heirs named in paragraph 3 of the application. But that application was rejected on the ground of some silly mistake presumably on account of laches on the part of the learned counsel who drafted the application.

2. Learned counsel appearing on behalf of the petitioner has referred to the application under Order XXII Rule 4 of the CPC, which was rejected by the order dated 1st December, 2021 on the ground of some inadvertent mistake, though the entire tenor of the application suggested that it was an application with a prayer for substitution of the legal heirs on account of death of the defendant no.6 as it appears from the cause title of the application as well as from the prayer.

3. It is further submitted on behalf of the petitioner that subsequent application was filed on behalf of the plaintiff/petitioner under Section 151 of the CPC with a prayer for substitution of legal heirs after demise of the defendant no.6.

4. Learned counsel appearing on behalf of the opposite parties by drawing attention of this Court to the application under Section 151 of the CPC has submitted that the plaintiff has made a prayer for substitution of legal heirs of the defendant no.6, since deceased, though the application for substitution was rejected earlier on 1st December, 2021.

5. On careful scrutiny of the application under Order XXII Rule 4 of the CPC dated 20th September, 2021, I find that the application was actually filed with a prayer for substitution of legal heirs of the defendant no.6, since deceased, and that too within time but the learned Judge passed an order dated 1st December, 2021 rejecting the application only on the ground of inadvertent mistake of the number of the deceased defendant, i.e., defendant no.10 instead of defendant no.6 in paragraph number 2 only. Though in the cause title and the prayer of the application under Order XXII Rule 4 of the CPC, it is found that the defendant no.6 died on 25th August, 2021 and prayer was made for substitution of the legal heirs. It is also not disputed that the defendant no.6 died on 25th August, 2021.

6. In the aforesaid view of the matter, I am of the humble view that the learned Judge ought to have considered the application for substitution of the legal heirs of the defendant no.6 by his order dated 1st December, 2021. Subsequent application under Section 151 of the CPC was filed with a prayer for substitution of the legal heirs and that was the reason why the learned Judge recorded the finding that after rejection of an application for substitution, subsequent application for substitution on the selfsame ground cannot be taken into account.

7. From that point of view, I find no infirmity in the order impugned dated 8th June, 2022.

8. Considering the aforesaid facts and circumstances, the revisional application stands dismissed, with liberty to the plaintiff/petitioner herein to file a fresh application under Order XXII Rule 4 of the CPC for substitution of the legal heirs of the defendant no.6, since deceased, before the learned Trial Court within seven days from the date of communication of the order and the learned Judge will dispose of the application in accordance with law.

9. Learned counsel appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Trial Judge, forthwith.

10. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)