

A.679
28.07.2025
Court No.6
BP

C.O. 2572 of 2024

Meherunessa Begam & Ors.
-versus-
Iswar Lal Patel & Ors.

Mr. Buddhadev Ghoshal, Sr. Advocate
Ms. Ankita Mondal
... for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order dated 4th March, 2024 passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah in Title Suit No. 301 of 2005.

By the order impugned the application under Order 11 Rule 1 and 2 of the Code of Civil Procedure was rejected and it was recorded that the suit abates in respect of defendant no.3.

Mr. Ghoshal, learned senior advocate appearing for the petitioners submits that unless the date of death of the defendant no.3 is made known to the court, no order recording abatement of the suit as against the deceased party can be passed. In support of such contention he places reliance upon a decision of the Hon'ble Division Bench in re: Nisit Mohan Chatterjee reported at 1993(1) CLT HC 338 and the decision of the Hon'ble Supreme Court in Perumon Bhagvathy Devaswom vs. Bhargavi Amma (dead) by LRS & Ors. reported at (2008) 8 SCC 321.

The petitioners filed an application under Order 11 Rule 1 and 2 of the Code of Civil Procedure praying for an order directing the defendants to give answers to the schedule noted in the interrogatories. It appears from the said application that the petitioners called upon the defendants to state the date of death of Natawarlal Patel and the particulars of the legal heirs of the said deceased. It does not appear from the records of this case that the date of death of the defendant no.3 has been communicated to the petitioners. In re Nisit Mohan Chatterjee (supra) the Hon'ble Division Bench has noted that in the absence of any material before the court to indicate the date of death, the court could not record an order of abatement. This Court finds that the date of death of the defendant no.3 has not been disclosed before the learned trial judge.

For such reasons, this Court is of the considered view that the learned trial judge could not have recorded that the suit stood abated against the defendant no.3.

For such reasons, this Court is inclined to set aside the order impugned and restore the application under Order 11 Rule 1 of the Code of Civil Procedure to the file of the learned trial judge.

Accordingly C.O. 2572 of 2024 stands allowed. The impugned order stands set aside. The application under Order 11 Rule 1 of the Code of Civil Procedure filed by the petitioners herein stands restored to the file of the learned

trial judge. The learned trial judge is requested to decide such application afresh in the light of the observations made by the Hon'ble Division Bench and the Hon'ble Supreme Court in the aforesaid decisions.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)