

Item No. 1
17.11.2025
Court. No. 6
GB

C.O. 3686 of 2025

Mahadeb Dhar & Ors.
Vs.
Smt. Vatsala Chaturvedi & Ors.

Mr. Swarup Banerjee,
Mr. Arindom Chatterjee,
Mr. Subham Biswas

...for the Petitioner.

1. This is an application challenging an order dated July 3, 2025, passed by the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.262 of 2012.
2. By the order impugned, the learned court rejected an application under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure. The learned court was of the view that the applicants were not necessary parties to the suit. The application was found to be barred by the provisions of *res judicata* as the said prayer had been made by the same parties earlier, and such prayer had been rejected vide order dated April 29, 2022.
3. The order was not challenged before any higher forum and the order had attained finality. Just to cure the defects pointed out by the court while dismissing the application for addition of party, a new deed was created by the defendants along with the parties sought to be added in the proceeding thereby, reconstituting the partnership firm.

4. The learned court was of the view that, in a suit for ejectment, the partnership firm was the tenant and was impleaded as a defendant. The said tenant was represented by two partners. One of the partners expired. Radheshyam Dhar was expunged from the array of respondents and Ganesh Chandra Dhar was contesting the suit as the sole surviving partner.
5. The applicants had contended before the court that the firm was actually a family run business which was continuing for more than 100 years and as such, the heirs of the deceased partner should be incorporated.
6. On an earlier round of litigation on the same issues, the court did not find any deed which would contemplate that on the death of the deceased partner, the heirs would become the partners of the firm. Even today, no such deed has been produced before this Court, which will indicate so. The applicants have reconstituted the firm in 2022, thereby trying to enlarge the scope of the ejectment suit and delay the proceedings. At the time when the cause of action accrued, the applicants were not the partners. There is nothing on record to show that the deed of partnership provided that on the death of the partner, the heirs of the deceased partners would be inducted as partners. The deceased partner was expunged by order of court. A similar prayer was rejected by an earlier court. No challenge was thrown to the said decision.

7. Moreover, in my view, this is an ejectment suit. The partnership firm was the tenant. One of the other surviving partners is already representing the tenant. If the applicants are interested in the fate of the proceedings, they are entitled to appear as defence witnesses, if the contesting defendant Ganesh Chandra Dhar cites them as witnesses.
8. Under such circumstances, I do not find any reason to interfere with the order impugned. The suit shall proceed and the applicants shall be entitled to adduce evidence on behalf of the defendants if they wish to do so.
9. Accordingly, the revisional application is disposed of.
10. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)