

**CO. 2798 of 2025**

22.06.26  
D/L  
Sl-05  
Ct. 06  
(Samar)

**Sri Sajal Roy**  
**Vs.**  
**Subrato Sen & Ors.**

Mr. Santanu Kumar Mitra,  
Mr. Amartya Pal,  
Mr. Mahek Jaiswal

... for the petitioner.

Mr. Tarak Nath Halder,

.... for the opposite party no. 1 & 2.

1. This revisional application is directed against an order dated June 16, 2025 passed by the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Sealdah in Title Suit No. 217 of 2013 whereby an application filed by the opposite party nos. 1 and 2 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 for their addition as proforma defendants in the suit has been allowed.
2. Title Suit No. 217 of 2013 had originally been filed by one Smt. Kalyani Sen and Smt. Gita Sen for decree of ejectment and khas possession. The plaintiffs had instituted the said suit claiming as co-sharers while asserting that the petitioner had become a trespasser upon expiry of the lease granted to him.
3. During pendency of the suit Smt. Kalyani Sen expired. The opposite party no. 3 was substituted as the heir and legal representative of Smt. Kalyani Sen.
4. Subsequently, the original plaintiff no. 2 i.e. Smt. Gita Sen also expired. Upon the demise of the original plaintiff no. 2, the opposite party no. 3 made an

application seeking expunction of her name while alleging that her only son and only daughter were not interested to join in the said suit as co-plaintiffs.

5. On such application of the opposite party no. 3, learned Trial Court expunged the name of the original plaintiff no. 2.
6. Subsequently, the opposite party nos. 1 and 2 filed an application under Order 1 Rule 10 (2) of the Code seeking addition of parties as pro-forma defendants by asserting that they had inherited the right, title and interest of their deceased mother (Smt. Gita Sen) in respect of the suit premises and have become co-owners thereof with the opposite party no. 3.
7. Such application has been allowed by the learned Trial Court by the order impugned. Feeling aggrieved thereby, the petitioner has approached this Court by filing the present revisional application.
8. Mr. Mitra, learned advocate appearing for the petitioner submits that once the application for expunction of the name of the original plaintiff no. 2 was allowed by the learned Trial Court based on the assertion that the opposite party nos. 1 and 2 were not interested to joint as co-plaintiffs, the learned Trial Court ought not to have added the said opposite parties as pro-forma defendants in the suit.
9. It is further submitted that in any case the proper procedure for bringing the said persons on record was

to file an application under Order 22 Rule 4 of the Code and if the time prescribed therefor had already expired, the opposite party nos. 1 and 2 could not have taken a different route and got added by an indirect way under Order 1 Rule 10 of the Code.

10. Mr. Halder, learned advocate appearing for the opposite party nos. 1 and 2 submits that if the Court allows an application for addition of party even without expressly condoning any delay that may have taken place in praying for setting aside abatement of suit such order of Court should be treated as one that has allowed the prayer for setting aside abatement upon condoning the delay. In support of his such contention he relies on a judgment of the Hon'ble Supreme Court in the case of ***Mithailal Dalsangar Singh and Others Vs. Annabai Devram Kini and Others*** reported at ***(2003) 10 SCC 691***.

11. Heard learned advocates appearing for the respective parties and considered the material on record.

12. It is well settled that any one of the co-owners can maintain a suit for eviction of a lessee or a tenant. The case at hand is one for eviction of (an erstwhile lessee by treating him as a trespasser) since the lease granted to the defendant has expired and he has (according to the plaintiff) being overstaying after expiry of the lease.

13. Now, if one of the co-owners can maintain a suit for

eviction then there would be no question of abatement of such suit upon death of one of the co-owners who had joined such suit as co-plaintiffs since the surviving co-owner would have every right in respect of every inch of the joint property and would thus be entitled to continue with the suit.

14. Therefore there was no question of abatement involved in the present case. Furthermore, in the instant case an application under Order 1 Rule 10(2) of the Code for addition of the heirs of one of the co-owners as proforma defendants has been allowed. In the case of ***Bhagwan Swaroop vs. Mool Chand*** reported at ***(1983) 2 SCC 132*** addition of party was not upset by holding that although in the face of a specific provision for substitution under Order 22 Rule 4 of the Code resort to a general provision like Order 1 Rule 10 may not be appropriate, yet since the laws of procedure are devised for advancing justice and not for impeding the same therefore such application should be approached with a view to advance justice without giving precedence to technical rules of procedure over substantial justice.

15. The other technical objection of Mr. Mitra that since the name of the deceased co-plaintiff was expunged on the opposite party no. 3's application asserting that the heirs of the deceased co-plaintiff were not interested to join as plaintiffs also lacks appeal in the

facts of the present case. This is so because the heirs (i.e. opposite party nos. 1 & 2) have not joined as plaintiffs but as proforma defendants.

16. In any case, the petitioner has not been prejudiced by such addition of parties because the nature of the suit remains the same and there would be no effect on the defence of the defendants.

17. Furthermore, it is well settled that an order passed under Order 1 Rule 10 of the Code falls in the realm of discretion of the learned Trial Court. In the facts of the present case, the presence of the added proforma defendants would assist the Court in affective adjudication of the matter and that being so it cannot be said that the discretion to add them as parties has been exercised *de-hors* the law.

18. For all the reasons aforesaid no interference with the order impugned is called for. CO. 2798 of 2025 stands dismissed. There shall be no order as to costs.

19. Since the suit is of the year 2013, the learned Trial Court is requested to expedite the hearing of suit and dispose of the same as expeditiously as the business of the learned Trial Court would permit.

20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

**(Om Narayan Rai, J.)**