
(2019) 09 CAL CK 0322

In the Calcutta High Court

Case No : Tender Second Appeal (SAT) No. 219 Of 2019, Civil Application (CAN) No. 10484 Of 2010, 5786, 7704 Of 2011, 291 Of 2014, 12206 Of 2017, 2122 Of 2019

Abdur Rahaman Skekh & Anr

APPELLANT

Vs

Fazal Karim Sk. & Ors

RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:

Citation : (2019) 09 CAL CK 0322

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Shila Sarkar, Kukteswar Maity, Kiran Kumari Mahato

Final Decision : Disposed Of

Judgement

Bibek Chaudhuri, J

Re : CAN 5786 of 2011

This is an application for substitution of respondent no. 1, since deceased, by his legal heirs and representatives.

It is found from the application that respondent no. 1 died intestate on 20th April, 2011 and the present application was filed on 20th June, 2011, that is within the statutory period of limitation.

Therefore, the instant application is allowed. The legal heirs and representatives of deceased respondent no. 1 be substituted as respondent nos. 1(a) to 1(h) in the appeal.

The Department is directed to make necessary correction of the memorandum of appeal by incorporating the names of the legal heirs and representatives of deceased respondent no. 1.

The application is, thus, disposed of.

Re : CAN 7704 of 2011

This is an application for substitution of appellant no. 1 Abdur Rahaman Shekh, who died on 27th June, 2011 leaving behind his legal heirs and representatives mentioned as substituted appellant nos. 1(a) to 1(g) in the application. The application is well within time. The legal heirs and representatives of the deceased appellants are all major and sue juris and accordingly, the same is allowed. The names of the legal heirs and representatives of deceased appellant no. 1 be incorporated in the memorandum of appeal as substituted appellant no. 1(a) to 1(g).

The Department is directed to make necessary incorporation.

Re : CAN 291 of 2014

By filing this application, the appellants/petitioners have stated that during the pendency of the appeal, the original respondent/opposite party no. 8 died. The legal heirs and representatives of the said respondent/opposite party no. 8, since deceased, are already on record. Therefore, the death of respondent/opposite party no. 8 is noted.

Re : CAN 2122 of 2019

This is an application filed on behalf of the substituted appellant nos. 1(a) to 1(g) stating, inter alia, that original appellant no. 2, being the wife of the original appellant no. 1 died during the pendency of the appeal.

Her legal heirs and representatives are already on record.

Therefore, the death of opposite party no. 2 be noted.

The Department is directed to expunge the name of respondent no. 2 from the cause title of the memorandum of appeal.

Re : CAN 10484 of 2010

This is an application filed by the appellants/petitioners praying for stay of operation of the decree appealed against.

It is found from the record that the instant appeal was admitted by the Division Bench of this Court vide order dated 22nd December, 2010. After admission of the appeal, the Division Bench was pleased to pass the following order:-

"During the pendency of this application, the learned trial Judge shall not draw up the final decree without the leave of this Court".

I have heard the learned advocates for the appellants/petitioners and respondent nos. 1(b), 1(c), 1(e), 1(g), 2, 3, 5, 6, 7, 9, 10 and 10(d), 11, 12(a), 12(b), 12(c), 12(e), 12(f), 12(g), 12(h), 12(I), 12(j), 14 and 28. Both the learned advocates admit that if this order continues till the disposal of the instant appeal, nobody will be prejudiced.

In view of such submission, the instant application is disposed of with a direction that the order dated 22nd December, 2010 passed on the instant application shall remain in force till the disposal of the appeal.

Re : CAN 12206 of 2017

This is an application for temporary injunction filed by the appellants/petitioners. While disposing of other applications, it is found that some of the original respondents have expired and their legal heirs are substituted. The substituted respondents are entitled to contest the instant application. Therefore, the appellants/petitioners are directed to serve notice of the instant application by registered Speed Post with A/D within 7 days after vacation. Immediately on completion of service, the learned advocate for the appellants/petitioners is at liberty to mention the matter for hearing and upon such mentioning, the application shall be listed for hearing.