
(2011) 09 CAL CK 0064
In the Calcutta High Court
Case No : C.O. 2896 of 2008

University of Calcutta and Another

APPELLANT

Vs

Rameswar Prasad Patodia

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Citation : (2011) 09 CAL CK 0064

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Krishnapada Pal, for the Appellant;

Final Decision : Allowed

Judgement

Harish Tandon, J.—Affidavit-of-service filed today be kept with the record. In spite of service, no one appears on behalf of the opposite party.

2. This revisional application is directed against Order No. 226 dated 25th June 2008 by which an application for deleting the name of the deceased Defendant, namely Gayatri Devi Pasari, was rejected.

3. During pendency of this suit, the Defendant No. 3 died and an application for substitution was allowed by substituting the widow and the only son of the said deceased. The said substituted heirs figured as the Defendants No. 3(a) and 3(b) in the cause title of the plaint. During pendency of the said suit, the widow of the original Defendant No. 3 died.

4. An application, for recording the death of the said widow, being Defendant No. 3(b), and deleting her name from the cause title of the suit, was taken out. But in the said application the deceased widow was described as Defendant No. 3(a) but in fact she was Defendant No. 3(b) in the original cause title. Precisely for such defect, the trial Court rejected the said application.

5. On perusal of the said application, I find that by stating that the Defendant No. 3(a) died, the name of the widow is expressly indicated therein. The Court

should not look into the nomenclature but the substance of the application. There cannot be any ambiguity in

C.O. 2896 of 2008

saying that on reading the said application, there is no dispute that what is sought to be contended by the Petitioner is that the widow of the original Defendant No. 3 died and his heir, being the son, is already on record. Mere a misstatement that the said widow was substituted as Defendant No. 3(a) instead of 3(b) does not entail dismissal of the said application.

6. Thus I find that the impugned order suffers from illegality and infirmity and cannot be sustained.

7. Accordingly, the impugned order is set aside. Consequently, the application filed by the Petitioner for recording the death of the widow of the original Defendant No. 3 and deleting her name is allowed. The name of Gayatri Devi Pasari is deleted from the cause title as the son, being the only heir of the said deceased, is already on record.

8. The revisional application is, thus, allowed. However, there will be no order as to costs.

9. Urgent photostat certified copy be supplied to the parties, if applied for, on priority basis.