

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

CO. No. 1322 of 2021

Sk. Asfar Ali & Ors.

Vs.

Sk. Asgar Ali.

For the Petitioners : Mr. Bhudeb Chatterjee, Adv.
Mr. Sanjib Kumar Ghosh, Adv.

For the Opposite Party : Mr. Sounak Bhattacharya. Adv/

Heard On : 13.09.2021.

Judgment : 17.09.2021

Subhasis Dasgupta, J:-

The impugned order No. 37 dated 26th March, 2021 passed by learned Civil Judge (Senior Division), Additional Court, Hooghly in Misc. Case No. 20 of 2019 arising out of Title Suit No. 370 of 2018, directing the petitioners/opposite parties to furnish information regarding the names and addresses of legal heirs of deceased defendant No.7/opposite party No.7, after rejecting the prayer of the petitioners dated 10.12.2020, under 151 of the Code of Civil Procedure, for recording the abatement, as against

defendant No.7/opposite party No.7, who left this world on 14.05.2018, is subject of challenge in this revisional application.

Original Title Suit No. 88 of 2014, subsequently transferred and renumbered as Title Suit No. 370 of 2018, had already been dismissed for default by order dated 04.04.2019. Seeking restoration of the suit, opposite party/plaintiff registered Misc. Case No. 20 of 2019 under Order IX Rule 9 of the Code of Civil Procedure.

In connection with Misc. Case, opposite party Nos. 1 to 6 filed a petition dated 10.12.2020, seeking recording of abatement order as against the defendant No.7/opposite party No.7, namely Sri Mandan Baul Das, who died on 14.05.2018, on the ground that legal heirs of defendant No.7/opposite party No.7 could not be substituted by resorting to the provisions available for substitution within the time provided under the law.

Mr. Bhudeb Chatterjee, learned advocate appearing for the petitioners/defendants/opposite parties submitted that the Court below had mechanically rejected their prayer for recording the abatement order, as against the defendant No.7/opposite party No.7, and proceeded thereafter illegally directing petitioners to furnish information regarding the names and addresses of legal heirs of deceased defendant No.7/opposite party No.7.

It was contended by Mr. Chatterjee that under the behest of an order under Order XXII Rule 10A of the Code of Civil Procedure,

petitioners could not be compelled to furnish the names and addresses of legal heirs, left by deceased defendant No.7/opposite party No.7, and it was highly illegal having no sanction of law. Incidentally Mr. Chatterjee referred the Vakalatnama, furnished by the learned advocate appearing in the Court below for deceased defendant No.7/opposite party No.7, and taking recourse to the Vakalatnama, further contended that by reason of change of brief, the subsequent learned advocate, appointed for petitioners/opposite party Nos. 1 to 6, could not be compelled to furnish the required information, as to who are the legal heirs of deceased defendant No.7/opposite party No.7, simply for adhering to the mandate available under Section XXII Rule 10A of the Code of Civil Procedure.

Mr. Sounak Bhattacharya, learned advocate representing the opposite party/plaintiff in reply submitted that there had been a collusion in suppressing the death information of deceased defendant No.7, which could be easily understood upon visualising the cremation/burial certificate, furnished by petitioners/opposite party Nos. 1 to 6 in the Court below.

Mr. Bhattacharya contended that petitioners/opposite party Nos. 1 to 6 had there definite information as regards the death occurred to deceased defendant No.7/opposite party No.7. It was thus further contended by Mr. Bhattacharya that since the original suit was for declaration and partition, the question of abatement would not necessarily arise, and more so the required death information neither could be

furnished by the learned advocate representing the deceased defendant No.7 in the court below, nor by the opposite party Nos. 1 to 6/defendants, or their learned advocates for taking effective steps as regards the substitution of legal heirs, left by deceased defendant No.7/opposite party No.7.

Upon advancing such submission Mr. Bhattachaya tried to impress upon the Court that death information of deceased defendant No.7 was deliberately suppressed thereby preventing the plaintiff/opposite parties from taking appropriate steps simply to avoid future complication.

Admittedly no death information, as against the deceased defendant No.7/opposite party No.7, was furnished in the Court below. Consequently Misc. Case under Order IX Rule 9 of the Code of Civil Procedure for restoration of the suit was filed impleading defendant No.7/opposite party No.7, who had already left this world.

With the insertion of Order XXII Rule 10A of the Code of Civil Procedure, a duty has been cast upon learned advocate to communicate to Court, the death information of a party in a suit. The relevant provisions mentioned hereinabove may be mentioned hereinbelow.

“10A. Duty of pleader to communicate to Court death of a party. – Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

There is neither any ambiguity, nor any obscurity contained in the 'words' used in Order XXII Rule 10A thereby laying down an express imperative upon the learned advocate appearing for a party to suit to furnish the death information immediately upon knowing the same, so that the Court upon such information being furnished give notice of such death information to other party simply to facilitate the requirement of law.

It is quite impossible for the opposite party/plaintiff to gather knowledge of such death information of deceased defendant No.7/opposite party No.7 without any required death information being filed by the learned pleader appearing for the deceased defendant No.7/opposite party No.7, who also entered his appearance for defendant No. 1 to 6/petitioners, involved in this case. In the event of such death information being furnished to the Court, the opposite party/plaintiff was required to act on account of the death of deceased defendant No.7, who simply for ignorance allowed limitation to run against him for taking appropriate steps against the legal heirs of deceased defendant No.7.

Mere change of brief with subsequent appointment of learned advocate in the given context of this case, as contended to have taken place, would not be sufficient enough to take an exception to the provisions contained under Order XXII Rule 10A of the Code of Civil Procedure.

Upon perusal of the impugned order, it appears that deceased defendant No.7 filed his written statement on 19th September, 2014, stating purchase of some portion of the suit property along with his three brothers. Without any controversy, Mr. Madan Baul Das/defendant No.7 left this world, whose death information neither could be furnished by the learned advocate representing the deceased/defendant No.7, nor by anyone of the defendants having gathered such information at any subsequent stage.

In the original suit, partition has been sought for in respect of subject property, shown in the schedule, upon declaring a solenama decree, dated 14.12.1982 passed by the learned Subordinate Judge, First Court Chinsurah, Hooghly in Title Suit No. 99 of 1981 and the solenama decree dated 16.12.1981 passed by Civil Judge (Junior Division), 1st Court, Chinsurah, Hooghly in Title Suit No. 8 of 1981 to be void, inoperative, concocted and fraudulent.

For the reasons discussed hereinabove, the opposite party/plaintiff was prevented by sufficient causes from taking any appropriate steps for substitution, as against deceased defendant No.7/opposite party No.7, and the learned court below, upon consideration of the entire materials available in the case record, rightly rejected the prayer for recording the abatement order, as against deceased defendant No.7/opposite party No.7, and thereby allowing the petition of opposite party/plaintiff with a direction upon the petitioners/opposite party Nos.1 to 6 to furnish

information regarding names and addresses of legal heirs of deceased defendant No.7/opposite party No.7.

The technicalities thus sought to be capitalized by Mr. Chatterjee, learned advocate appearing for the petitioners, in the given context of this case, should not be given precedence, giving a contrary look to the provisions contained in Order XXII Rule 10A of the Code of Civil Procedure. For a little bit change in the circumstances, the imperative obligation to furnish the death information of deceased defendant No.7 should not be interpreted in a manner, other than the purpose actually contemplated under Order XXII Rule 10A of the Code of Civil Procedure. The impugned order does not call for any interference.

The revisional application fails being without any merits, and accordingly stands dismissed.

Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Subhasis Dasgupta, J.)