

11.03.2022
Ct. 21
D/L 13

I.A No. C.A.N 5 of 2021
in
SAT 276 of 2010
With
I.A No. C.A.N 1 of 2010 (Old No: C.A.N 6193 of
2010)
With
I.A No. C.A.N. 2 of 2010 (Old No: C.A.N 6220 of
2010)
With
IA No. C.A.N 3 of 2014 (Old No: C.A.N 7805 of 2014)
With
IA No. C.A.N 4 of 2014 (Old No: C.A.N 8541 of 2014)
With
IA No. C.A.N 6 of 2021

Rabindra Nath Mondal & Ors.
-Vs-
Kutubuddin Naskar & Ors.

Mr. Subir Kr. Bhattacharya,
... for the applicants

The petitioners being the legal heirs of one Kalipada Mondal, the defendant no.1 of Title Suit no.157 of 1981 have filed the present appeal along with the above mentioned CAN applications.

By filing SAT No.276 of 2010 they have challenged the decree passed against their father Kalipada Mondal in the above Title Suit on 08.09.1983 and judgment and decree passed by learned Additional District Judge 10th Court Alipore, the First Appellate Court in Title Appeal No.922 of 1983 on 22.01.1985.

They have alleged that their father the defendant no.1 had died on 04.10.1991.

It has come on record that SAT 276 of 2010 is at present stands dismissed for default on 18.01.2021 and by filing CAN No. 5 of 2021 the appellants have prayed for setting aside the order of dismissal of the Appeal for default on 18.01.2021. Therefore, whether the appeal is liable to be restored to its original file and number, I find necessary to consider CAN 1 of 2010 along with the present CAN 5 of 2021.

That by filing the CAN No. 6193 of 2010 (renumbered CAN 1 of 2010) they have prayed for condonation of delay in filing the present appeal after lapse of twenty five years of passing of the decree on the ground that when the decree was passed they were minors and they came to know about the same in the year 2010 when the respondents prevented them from cultivating the suit property.

It may be true the present petitioners were minors and were not aware of any suit being instituted against their father by the respondents in respect of the suit property way back in 1981, but the fact remains that their father was defendant no.1 in the said suit and the said suit was decreed on contest against their father long back in 1983 and it was their father who had filed the Appeal and which was also decreed against their father on contest long back in the year 1985. It is their

case that their father died in 1991. If that be so, then their father could have filed the Second Appeal before this Court, but their father had failed to do so and had allowed the decree to stand against him.

Keeping in view such facts, I do not find any merit on the grounds taken by the appellants for condonation of delay in filing the present Appeal. There being an extraordinary delay of twenty five years and such delay valuable rights have been accrued in favour of the respondents. Therefore, I am not inclined to allow the CAN 5 of 2021 for setting aside dismissal order dated 18.01.2021 and restore the SAT 276 of 2010 to its file original file and number.

Consequently, other CAN being No. 6193 of 2010(renumbered as CAN 1 of 2010) for condonation of delay in filing the appeal, CAN.no. 2 of 2010 for stay of operation of the decree dated 1983 and 1985, CAN No.3 of 2014 for leave to file appeal in place of deceased defendant no.1 Kalipada Mondal, CAN No. 4 of 2014 that they having attained the age of majority they may be permitted to contest the appeal in their individual right being the legal heirs of deceased JDR, and CAN No. 6 of 2021 for deleting the name of their mother who died on 20.03.2018 from cause title are not maintainable.

Accordingly, **I.A No: CAN No.1 of 2010 (Old No. CAN 6193 of 2010), IA No. CAN No.2 of 2010 (Old**

No: CAN 6220 of 2010), IA No. CAN No.3 of 2014 (Old No. CAN 7805 of 2014), IA No. CAN No. 4 of 2014 (Old No: CAN 8541 of 2014), CAN No. 5 of 2021 and CAN No.6 of 2021 are disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)