

Item 9. 19-09-2022

SA 138 of 2022
CAN 1 of 2022

^{sg} Ct. 8

Tutun De and Ors.
Versus
The Collector, District North 24 Parganas

Mr. Kartick Kumar Bhattacharyya, Adv.
Mr. Narayan Chandra Das, Adv.
Mr. Dharmadas Hazra Choudhury, Adv.
Mr. Subrata Sanyal, Adv.
Ms. Soumashree Dutta, Adv.

...for the appellants

Ms. Sutapa Sanyal, Adv.
Ms. Susnita Saha, Adv.

...for the respondent

The appeal and the connected application are taken up together and disposed of by this common order.

The appeal is directed against the judgment and decree dated 21st April, 2021 by affirming the judgment and decree dated 3rd September, 2018 passed by the trial court in a suit for declaration that Ashutosh Mukhopadhyay has suffered a civil death.

The learned trial court, after taking into consideration the paper publication, refused to grant a decree in favour of the appellants, who are the legal heirs of Ashutosh Mukhopadhyay in absence of any missing diary contemporaneously lodged.

The appeal court confirmed the said judgment and decree by observing that in view of the judgment of this Court in ***Koushik Hati vs. Madhuri Hati & Anr.*** reported in ***2015 SCC OnLine Cal 8238*** that in absence of a missing diary and publication in newspapers for wide circulation, no decree can be passed in a suit

for declaration that the person is not alive. In short the decree for civil death cannot be passed unless the aforesaid twin requirements are satisfied. Further ground was that a claim for declaration may not be maintainable as the plaintiff failed to substantiate that their right, title and interest over the property are denied by others.

During the pendency of the appeal, the respondents appeared and produced a copy of the missing dairy. Consequent there upon, an application was filed by the appellants for amendment of the plaint. We also allowed the said amendment at the appeal stage and invited written statement from the respondent. In the amended plaint, it has been specifically stated that after the death of Makhanlal Mukhopadhyay the properties are to be distributed between the six sons equally. During the lifetime of Makhanlal, Ashutosh Mukhopadhyay, one of the 6 sons, went missing since 11th March, 1986. He was bachelor leaving behind no heirs, successors or legal representative save and except his five brothers, who are the plaintiffs in the suit. The properties in question were not partitioned. Immediately, after the missing of Ashutosh, a missing diary was lodged and GD entry was made by the police station concerned. The said entry was kept under the custody of Shankar Prasad Mukhopadhyay. However, the said document could not be produced at the time of trial in order to obtain information.

An application under the Right to Information Act, 2005 was made and in respect thereto, the respondents have acknowledged that a missing diary was lodged,

contemporaneously which is admitted in the letter dated 3rd January, 2019. It was further alleged that the cause of action arose on 11th March, 1996. It is further stated that in spite of knowledge of such civil death, the Municipal authorities are refusing to acknowledge the said fact and denying the right of his brothers and other legal heirs to mutate their names in the relevant records.

The learned Counsel for the respondent has filed a written statement in the form of affidavit. There is no denial of the fact that a paper publication was made after Ashutosh went missing and also a GD entry was made by one of the brothers. These are the twin requirements which are relevant for the purpose of considering a prayer for declaration of civil death of a person.

There is no doubt with regard to the newspaper publication or the GD entry made. The police could not traced out the missing person. Moreover, we find that the Municipal authorities are refusing to acknowledge the plaintiffs as the legal heirs or representatives of Ashutosh as the properties would have been devolved upon them in absence of Ashutosh. The evidence on record clearly proves that Ashutosh Mukhopadhyay was not heard of after seven years from the date of his missing and he has not been heard of for seven years by persons who would naturally have heard of him if he had been alive. The appellants have fully discharged their burden.

Considering the projection of the additional evidence, the impugned orders are set aside. It is hereby declared that Ashutosh Mukhopadhyay, son of Makhanlal Mukhopadhyay is presumed to be dead after 10th March, 1993 i.e. seven years after he went

missing i.e. 11th March, 1986.

On such consideration the suit is decreed.

The department is directed to dray up decree as early as possible.

CAN 1 of 2022 stands also disposed of.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)