

October 4, 2023
Sl. No.33
Court No.19
s.biswas

CO 1571 of 2023

Miss Rudrani De and another
vs.
Sri Kishan Kumar Kedia and others

Mr. Tapash K. Bhattacharya
Mr. Aviroop Bhattacharya

... for the petitioners

This revisional application arises out of an order dated January 21, 2023 passed in Misc. Case No.29 of 2014, arising out of Title Execution Case No.25 of 2010. The learned Civil Judge (Senior Division), Barasat, North 24 Parganas rejected the misc. case. The said misc. case was an application under Section 47 of the Code of Civil Procedure. According to the petitioners/judgment debtors, the decree could not be executed, satisfied and discharged as the same was passed against a dead man.

The next point taken in the application was that the plaintiff did not have any right, title and interest in the decreetal property. There were procedural defects. As the defendant no.2 was dead, direction upon the defendant no.2 to pay the amount of Rs.12,80,000/- was illegal and the decree was a nullity. There were no findings by the learned court as to why the suit was decreed against the proforma defendants. Compensation could not be awarded in the absence of any claim. The lease deed was not sufficiently stamped and the exhibit 3 series, i.e., the acceptance of the money by the defendant no.2 could

not be proved. That the plaintiff could not prove his own case but relied on the weakness in the defence case.

The learned court below dealt with each and every point taken by the petitioner and found that the mistake in the decree with regard to the order against the defendant No.2 (deceased) was corrected by invoking power under Section 152 of the Code of Civil Procedure. A substitution application had been filed well within time for substitution of the heirs of the defendant no.2. The defendant no.2 was duly represented by his children and widow, i.e., the defendant nos.4, 5 and 6. The substitution of the deceased defendant no.2 was well within the knowledge of the petitioners. The heirs of the deceased were already on record and the omission or slip in the decree was corrected by the court which passed the decree.

In my opinion, the process adopted by the trial court was correct and the decree was subsequently corrected by rectifying the accidental slip/omission. Such correction would not render the decree as a nullity for the purpose of disposal of the application under Section 47 of the Code of Civil Procedure.

It further appears that the other contentions of the petitioners were with regard to the merits of the judgment and decree. In my opinion, the executing

court cannot travel beyond the decree and act as an appellate court.

The petitioners submit that an appeal is pending being FA 133 of 2018. The merits of the judgment and decree shall be decided in the said appeal, but from the order impugned, it does not appear that the learned court below had acted illegally and with material irregularity in holding that the petitioners could not widen the scope of execution proceedings by challenging the merits of the judgment and decree.

Mr. Bhattacharya further submits that the learned court could not have fixed the hearing of application for calculation of interest as the learned trial court had specifically held that the interest part will be calculated in a separate proceeding. This court is of the view that Mr. Bhattacharya can make appropriate submissions in this regard in accordance with law before the learned court below.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

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

(Shampa Sarkar, J.)