

04 **13.10.
2023**

Ct. No. 04

Ab

**FMAT 401 of 2023
IA No. CAN 1 of 2023**

**Keshar Chand Padia @ Paria
Vs.
Smt. Namita Naiya and others.**

**Mr. Debjit Mukherjee,,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Ms. Sinjini Chakraborty.
... for the appellant.**

**Mr. Supratim Dhar,
Mr. Dhananjay Nayak.**

... for the respondents.

Pursuant to the order dated 10th October 2023, the Constituted Attorney of the plaintiff/respondent is personally present in Court today.

The Counsel for the plaintiff/respondent, on instruction received in the open Court, submits that the photocopy of the death certificate allegedly issued by the Pranganj Gram Panchayat was handed over to her by another person, who is known to her. It further transpires from the submission of the plaintiff/respondent that the said Constituted Attorney has no acquaintance with the plaintiff/respondent as he met her once or twice before the institution of the suit.

It is really improbable and inconceivable that a person, who does not know the party, is acting as Constituted Attorney and prosecuting the case and affirming an affidavit verifying the statement made in the plaint as true to his knowledge. Several discrepancies have come in course of hearing of the instant appeal apart from the forged and manufactured document relating to the death of Paresh Chandra Sen, which needs a thorough enquiry.

On the last occasion, the Aadhar and PAN card, which was produced before the trial Court indicate the

date of birth of the plaintiff/respondent in the year 1970; on the other hand, the record maintained by the Kolkata Municipal Corporation relating to recording of the birth and death of a person within its jurisdiction revealed the date of death of the said Paresh Chandra Sen in the year 1964. It raises a serious concern on the role of the litigant approaching the Court with such false and fabricated documents and getting an interim order, which causes immense injury to the other side or impedes further progress in relation to a construction.

By the supplementary affidavit, the appellant has disclosed the letter issued by Pranganj Gram Panchayat in reply to the queries raised under the Right to Information Act wherein it is indicated that the purported death certificate has not been issued as there is no reflection in the record. It is further revealed therefrom that the said Gram Panchayat started issuing the death certificate after 1997, whereas the death certificate relied upon by the plaintiff/respondent is of prior date.

There is no ambiguity and/or doubt in our mind that the said death certificate has not been issued by the said Gram Panchayat and, therefore, is false, fabricated and manufactured for the purpose of this case. Though the Constituted Attorney pleads ignorance of the same, as he obtained from a third party, namely, Rustom Sk., but such stand appears to us contrary to the stand taken by the plaintiff/respondent herself. On the last occasion, she disclosed that the said death certificate was found in one of the file containing documents relatable to her alleged father.

In **Ramrameshwari Devi and others vs. Nirmala Devi and others**, reported in **(2011) 8 SCC 249**, the Apex Court in strong words have indicated that there has been a rampant filing of the litigation based on the false and fabricated documents and, therefore, the forgery has become way of life in the Indian Courts. In **Badami (Deceased) by her LR. Vs. Bhali**, reported in **(2012) 11**

SCC 574, the Apex Court also dealt with the identical case where the false and fabricated documents were used in the Court proceedings and deprecated such practice and held that the Court cannot allow its eyes to be closed in such facts and strong action is required to be taken in this regard. Even prior to the aforesaid judgment, the Apex Court in **K. D. Sharma vs. Steel Authority of India Limited and others**, reported in **(2008) 12 SCC 481**, held that the moment the Court found that it has been deceived, there is no difficulty on the part of the Court to refuse to hear anything further from the said litigant and should take an appropriate step so that the aforesaid act of filing the forged and fabricated document is not repeated.

Obviously, the observations made by the Apex Court in the above reports are laudable and convey a very strong message in the litigating field that a person securing an order on the basis of false and fabricated document should be dealt with iron hands and should not be let to go scot-free and walk merrily in the corridor of the Court.

We are reminded of the provisions of Section 191, 192 and 193 of the Indian Penal Code, which makes such act an offence to be investigated and tried as a criminal offence and the adequate punishment provided therefor should be imposed.

We, therefore, direct the appellant to file a written complaint, which will be treated as First Information Report, within five days from date by enclosing the photocopy of the death certificate issued by the Pranganj Gram Panchayat. Immediately an investigation shall be done in this regard by a responsible Officer appointed by the Superintendent of Police, Baruipur. After completion of the investigation, the charge-sheet/final report shall be filed before the learned Chief Judicial Magistrate, 24-Parganas (South).

We expect that all course of action required under

the relevant procedural law as well as the substantive law shall be completed as expeditiously as possible without any unreasonable delay.

Reverting back to the merit of the instant appeal, the claim of the plaintiff/respondent relates to the right, title and interest in respect of the property inherited by her from her father, namely, Paresh Chandra Sen, since deceased and an ex parte ad interim order of injunction had already been passed keeping in mind that Paresh Chandra Sen, since deceased, had a right, title and interest in respect of the property, the plaintiff/respondent being the daughter has a right therein and, therefore, the parties to the proceeding should maintain a status quo with regard to the respective physical possession, nature and character of the suit property.

At the time of admission and considering the prima facie case having made out by the appellant, we stayed the operation of the order dated 13th September 2023.

Since the entire claim is founded upon the inheritance, which on the disclosure of the document by the appellant before us creates a strong suspicion and doubt as the said Paresh Chandra Sen, since deceased, was shown to have died in the year 1964 in the record maintained by the Kolkata Municipal Corporation and the PAN and Aadhar card relied upon by the plaintiff/respondent indicates the date of birth of the plaintiff/respondent in the year 1970.

It is improbable and inconceivable that a person, who died in the year 1964 shall have a child born in the year 1970. Furthermore, the date of death of Paresh Chandra Sen, since deceased, was shown in the plaint as 1st January 1985 on the basis of the death certificate purported issued by the Pranganj Gram Panchayat, which is fabricated and manufactured and, therefore, the order passed by the trial Court cannot be sustained and the same is hereby set aside.

Liberty is granted to the parties to take appropriate steps in the said suit.

Considering the gravity of the issues as discussed herein above, the instant appeal is allowed with costs assessed at Rs. 2,00,000/- to be deposited with the State Legal Services Authority within three weeks from date.

In the event of default in payment of the said amount, the trial Court shall not only refuse to proceed with hearing of the injunction application but the State Legal Services Authority is permitted to proceed under the Bengal Public Demand Recovery Act, 1913 treating the operative portion of the order as land revenue.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)