

16.05.2024
Sl. No.146(ML)
srm

C.O. No. 121 of 2024

Yeakub Ali Molla @ Iyakub Ali Molla & Ors.

Versus

Anowara Bibi & Anr.

Mr. S.T. Mina,
Mr. Pratick Sardar

...for the Petitioners.

Mrs. Sohini Chakrabarty,
Ms. Prajaaini Das

...for the Opposite Parties.

1. The revisional application arises out of an order dated December 1, 2023 passed by the learned Additional District Judge, 10th Court at Alipore, District-South 24-Parganas, in Revocation Case No.08 of 2012.
2. By the order impugned, the learned court rejected an application filed by the petitioners. The petitioners prayed for recall of DW1 under the provisions of Order XVIII Rule 17 of the Code of Civil Procedure, seeking to adduce further evidence and tender two documents and get the same admitted as exhibits, namely, a *Faraznama* and a death certificate issued by the Bodra Gram Panchayat.

3. The learned court rejected the said application on the ground that the petitioner No.1, while deposing as DW1, admitted the contents of a heirship certificate issued by the gram panchayat on May 8, 2012. According to the learned court, such prayer for recall was only to fill up a lacuna in the evidence. The learned court further held that the certificate dated March 3, 1993, issued by the gram panchayat, was not a death certificate, but it was a narration of the information received by the gram panchayat from other persons that Yusuf Ali Molla had died on January 22, 1967. On the basis of such information, the alleged certificate/communication was issued on March 3, 1993.
4. Mr. Mina, learned Advocate appearing on behalf of the petitioners, submits that the opposite parties who prayed for revocation of the letters of administration claiming to be heirs of the predeceased son of the testator (Abdul Molla), namely, Yusuf Ali Molla did not have any caveatable interest. The application for revocation of the letters of administration could neither be filed by them nor entertained by the learned court, on their prayer. According to the Mohamedan Law of inheritance, the

children of predeceased son of the owner of the property, would not inherit the property upon demise of the original owner.

5. Mrs. Chakrabarty, learned Advocate appearing on behalf of the opposite parties, places the contents of the objection filed by the petitioners to the application for revocation. From the said averments, it appears that the grounds for objecting to the revocation were quite different from what Mr. Mina has either submitted before this Court or pleaded in the application for recall of DW1.
6. In paragraph 16 of the objection, it was stated that the opposite parties, were not the daughters of Yusuf Ali Molla. They did not have any relationship with Abdul Molla. They were not entitled to any notice. In paragraph 11, it was stated that the opposite party Nos.1 and 2 were fictitious persons, being set up by one Dazi Bibi, with a *mala fide* intention. They also filed a partition suit by ignoring the letters of administration. Apart from the petitioners, no one had inherited the property. The Will left behind by Abdul Molla clearly indicated that the predecessor-in-interest of the petitioners, was the only beneficiary.

7. Having considered the rival contentions of the parties, this Court is of the view that the learned court did not act illegally or with material irregularity. The specific objection raised by the petitioners was that the opposite party Nos.1 and 2 were fictitious persons and they were set up by one Dazi Bibi to file the application for revocation. That the petitioners did not have any connection either with Yusuf Ali Molla or with his family. They did not have any interest in the property. The opposite parties were not Yusuf Ali's daughters.
8. Under such circumstances, the application for recall DW1 to tender two documents, namely, a *Faraznama* and certificate/communication of the gram panchayat, cannot be allowed. Without there being any pleadings on the basis of the *Faraznama* and the certificate of the panchayat, the question of allowing them to go into evidence was impermissible in law. That Yusuf Ali Molla did not have any right of inheritance in the property of Abdul Molla, because Yusuf Ali Molla predeceased his father, cannot be brought on record at this stage by way of evidence, in the absence of pleadings. In the objection filed by the petitioners to the application for revocation,

the case was that the opposite parties were not the daughters of Yusuf Ali Molla and did not belong to the family of Abdul Molla.

9. Under such circumstances, evidence beyond pleadings cannot be allowed. Moreover, the learned court rightly recorded that the certificate of the panchayat authorities, was not a death certificate. It was a communication from the panchayat authorities. The contents were based on hearsay. The court rightly rejected the same as irrelevant.
10. The learned court also observed that the DW1 had admitted the heirship certificate produced by the opposite parties and in order to fill up the lacuna in the evidence, such prayer for recall was made. Recall of a party to adduce evidence after the evidence had been closed, cannot be allowed for the mere asking. This is not a case where the petitioners had come across valuable documents after the closure of evidence, which could not have been produced at the time when the evidence was being adduced, despite due diligence. Moreover, these documents do not have any foundational basis in the objection that was filed. Thus, the question of allowing evidence beyond the pleadings would not be proper.

11. The revisional application is accordingly dismissed.
12. There shall be no order as to costs.
13. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)