

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 1669 of 2023
(CAN 2 of 2023)
(CAN 3 of 2023)***

***Jayanta Chowdhury
-Vs-
The State of West Bengal & Ors.***

For the Appellant	:	Mr. Saptangshu Basu, Sr. Adv. Mr. Supratim Dhar, Adv. Mr. Dhananjay Nayak, Adv. Mrs. Soma Chakraborty, Adv.
For the Respondent No. 4	:	Mr. Piush Chaturvedi, Adv. Mr. Suman Basu, Adv. Mr. Abdul Murshid, Adv.
For the Panchayat	:	Mr. Ayan Banerjee, Adv. Mr. Subhajit Das, Adv.
For the State	:	Mr. Suman Sengupta, Sr. Govt. Adv. Mr. Dwaipayan Basu Mallick, Adv. Mr. Sambuddha Dutta, Adv. Mr. Sanatan Panja, Adv.
For the Applicant [in CAN 3/2023]	:	Mr. Kallol Basu, Adv. Ms. Dola Adhikari, Adv. Mr. Gaurav Dutta, Adv.
Heard on	:	10.06.2024 & 11.06.2024
Judgment on	:	11.06.2024

Joymalya Bagchi, J. :-

1. Appellant has assailed order dated 20.04.2023 whereby a learned single Judge revived a disposed of matter by recalling the order of disposal and dismissed the writ petition. It was observed earlier order stands cancelled and any step taken relying on the certificate was also set aside.

2. Factual matrix giving rise to the impugned order is as follows :-

The dispute between the parties revolves around the date of death of one Rakhiya Bibi @ Rakia Mondal @ Saima Mondal. While the respondent no.4 and the applicant in CAN 3 of 2023 (*who seeks addition of party in the appeal*) contended Rakhiya Bibi died on 04.09.2002, it is the appellant's case that she had passed away on 17.06.2009. The date of Rakhiya's death assumes importance with regard to the devolution of intestate rights to her heirs and successors under Mohammedan law. Admittedly, Rakhiya's father viz. Nawab Ali Mondal died on 24.01.2006. Had Rakhiya pre-deceased her father and died in 2002, her father and uncles would have inherited her property instead of her children as per Mohammedan law. But if she died in 2009 after her father had expired, the intestate succession would go to her children.

3. The case of the appellant is that Rakhiya had died in 2009 and he had purchased her property from her children who were her rightful heirs. On the other hand claiming that Rakhiya had pre-deceased her father, respondent no.4 as well as the applicant in CAN 3 of 2023 claim

they had purchased the property from the rightful heirs of Rakhiya namely, her father and uncles.

4. It may be apposite to mention a partition suit being Title Suit No.430 of 2014 was instituted between the appellant and the applicant. The suit came to be decreed on compromise in June, 2018. In the terms of compromise which became a part of the decree the appellant admitted that Rakhiya had pre-deceased her father. Subsequently, an application has been filed praying for recall of the compromise decree which is pending between the parties. Another suit being Title Suit No.311 of 2021 is pending between the appellant and respondent no.4.

5. In this backdrop, appellant instituted the present proceeding under Article 226 of the Constitution of India, inter alia, praying for a direction upon the Panchayat authorities for true and actual information on the date of death of Rakhiya Bibi as per original records. It may be apposite to mention neither respondent no.4 nor the applicant in CAN 3 of 2023 were made parties in the writ proceeding.

6. After hearing the appellant learned single Judge by order dated 18.03.2021 noted the dichotomy in the death certificate issued by the Gram Panchayat showing date of death of Rakhiya as 04.09.2002 and intimation given by the Pradhan of the Gram Panchayat in response to the Right to Information Act that Rakhiya had died in June, 2009 and the Panchayat authorities were directed to file a report with regard to the date of death of Rakhiya.

7. Panchayat authorities filed report before the learned single Judge and on the strength of the report by order dated 20.04.2021, learned Judge disposed of the writ petition :-

“In view of the aforesaid submission of the Gram Panchayat it is recorded herein that the corrected and actual date of death of Rakhiya Bibi @ Rakia Mondal @ Saima Mondal, wife of Sakauddin Mondal is 17th June, 2009.

The writ petition is accordingly disposed of.

The report filed in the form of affidavit-in-opposition annexing the copy of the certificate of death of Rakhiya Bibi @ Rakia Mondal @ Saima Mondal showing the date of death as 17th June, 2009 is retained with the records.”

8. After disposal of the writ petition, respondent no.4 took out an application for addition of party and recall of the order. This came to be allowed by the learned single Judge in the impugned order.

9. Mr. Saptangshu Basu, learned senior Advocate for the appellant submits that the order impugned is wholly without jurisdiction. No *lis* was pending before the learned single Judge. Accordingly, there was no scope to allow the application for addition of party and recall the order dated 20.04.2021.

10. In reply, Mr. Piush Chaturvedi, learned Advocate for respondent no.4 as well as Mr. Kallol Basu, learned Advocate for applicant in CAN 3 of 2023 submit they were necessary parties to the proceeding and the order was procured through suppression of material facts. Appellant had admitted in the compromise decree that Rakhiya had pre-deceased her father. Thereafter, he adopted this surreptitious route to reopen the issue. In view of this fraud perpetrated on the court, learned single Judge

allowed the prayer for addition of party and recalled the order dated 20.04.2021 and dismissed the writ petition.

11. The moot question which falls for consideration is did the learned single Judge have jurisdiction to revive a disposed of matter and allow an application for addition of party and recall the earlier order?

12. It is trite law when a proceeding is disposed of the *lis* no longer survives. If any party (including a necessary party) is aggrieved by a final order disposing a case, remedy lies in seeking leave to appeal and preferring an appeal before the appellate forum. In this regard, reference may be made to *State of Uttar Pradesh vs. Brahm Datt Sharma & Anr.*¹

13. Unfortunately, respondent no.4 did not seek recourse to the appellate remedy but had approached the learned single Judge to recall the order. To salvage this stance Mr. Chaturvedi strongly argues the order was procured through fraud and misrepresentation. He contends the civil proceeding pending by and between the appellant and his client had not been pleaded and an impression was given before the learned single Judge that the compromised suit was still alive.

14. I have extensively gone through the pleadings in the writ petition. It is true appellant had referred to the Title Suit No. 430 of 2014 but not to the suit pending by and between himself and respondent no.4. But crux of the matter canvassed in the petition relates to dispute with regard to the date of death recorded in the death certificate issued by the Gram

¹ (1987) 2 SCC 179 [Para 10]

Panchayat as September, 2002 and the response of the Pradhan under the Right to Information Act disclosing the date of death as 17.06.2009.

15. In view of such dichotomy, learned Judge directed submission of report by the Panchayat authorities. When the Panchayat authorities submitted a report stating date of death as 17.06.2009, the learned single Judge relying on the report recorded the date of death as 17.06.2009. Non-disclosure of the civil suit pending between the appellant and respondent no.4 or the status of the proceeding would have little bearing on the order passed by the learned Judge.

16. In these circumstances, I am unable to accept the submission of Mr. Chaturvedi that the order had been procured through fraud which would render it void *ab initio*. There is a clear demarcation between an illegal order and an order which is passed without jurisdiction or procured through fraud. This Court is unable to persuade itself that the order dated 20.04.2021 was procured through fraud and was void *ab initio*.

17. Accordingly, I am of the view once the writ petition was disposed of by the said order, the subsequent order dated 20.04.2023 reviving the proceeding by recalling the earlier order was without jurisdiction and is liable to be set aside.

18. Ordinarily this Court would have given leave to respondent no.4 or the applicant in CAN 3 of 2023 to seek leave to appeal and avail the appellate remedy against the earlier order dated 20.04.2021. However,

examining the pleadings in the writ petition and the order dated 20.04.2021, I am of the opinion the learned single Judge had not been called upon to decide the correct date of birth of Rakhiya Bibi. Learned Judge merely sought a report from the Panchayat with regard to the date of death and recorded a finding on the strength of the report submitted by the said authority. The recording cannot be treated as an adjudication on the correctness of the said report.

19. On the contrary, during hearing weighty arguments were canvassed by respondent no.4 and applicant in CAN 3 of 2023 to rebut the correctness of the report submitted by the Panchayat.

20. Mr. Chaturvedi argued the entries at SSKM Hospital and Kolkata Municipal Corporation recording the date of death as 17.06.2009 has since been clarified/corrected. He also contended that the appellant had admitted in the compromise decree in 2018 that Rakhiya had pre-deceased her father.

21. This Court also noted that in paragraph 14 of the writ petition appellant had averred he came to know of the alleged incorrect death certificate issued by the Panchayat authorities during hearing of the revisional application being C.O. 3593 of 2016. If that was so, he was aware of the date of death recorded in the certificate issued by the Panchayat authorities as September, 2002 when he had entered into compromise with the applicant in Title Suit No. 430 of 2014.

22. Whether the prayer of the appellant to reopen this concluded issue is justified needs to be decided in the light of the aforesaid circumstances in the civil proceedings pending by and between the parties.

23. It is also clarified that it shall be open to the parties to seek cancellation of the death certificate subsequently issued and submitted by the Panchayat authorities in this proceeding in accordance with law, if so advised.

24. With these observations, the appeal is disposed of.

25. In view of disposal of the appeal, connected applications being CAN 2 of 2023 and CAN 3 of 2023 are also disposed of.

26. There shall be no order as to costs.

27. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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