

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 3047 of 2023

CAN 1 of 2024

Bijoy Kumar Roy

VERSUS

Madhumita Ghosh (Dead)

For the petitioner:

Mr. Prantick Ghosh, Adv.
Mr. Prasad Bhattacharya, Adv.

Last Heard On: December 13, 2024

Judgment on: December 20, 2024

Biswaroop Chowdhury,J:

The petitioner before this Court is a plaintiff in a suit for eviction and is aggrieved by the order dated 03-08-2023 passed by Learned Civil Judge (Senior Division) 2nd Court Barasat, in Title Suit No. 218 of 2008 rejecting the application under Order 22 Rule 4A CPC filed by the Petitioner.

The case of the petitioner/plaintiff in application under Order 22 Rule 4A CPC before the Learned Trial Court may be summed up thus:

1. That First Defendant Pranati Ghosh died on 12. 03.2016, leaving behind Second Defendant as her sole Legal Heir/Successor. After her death appropriate application was taken out by the plaintiff herein for recording the death and also expunging the name of deceased defendant.
2. Ultimately the eviction suit was pending between present plaintiff and second defendant namely Madhumita Ghosh.
3. Madhumita Ghosh also died on February 14, 2018 leaving behind no class I and II legal Heirs or any other person considered fit to inherit the property of deceased.
4. After the death of Madhumita Ghosh, one Dilip Kumar Ray filed an application under Article 226 of the Constitution of India being WP. No-4018/W) of 2018 before this Court complaining inaction on the part of Officer in charge of Dum-Dum Police Station in handing over the dead body of Madhumita Ghosh. The writ petitioner was precluded by the Writ Court to put forward any claim over the immovable property left behind deceased Madhumita Ghosh.
5. That immediately after death of Madhumita Ghosh the Officer in charge of Dum-Dum Police Station has taken over the possession of the property and put the padlock at main entry and exit of the suit property without any valid ground.

It was further contended by the plaintiff that within the collectorate North 24 Parganas Police Station and Mouza-Dum-Dum JL.No-13, Tauzi No-

3194, Holding No-48, Mandir Road Kolkata-700028 all that piece and parcel of land admeasuring about 19 cottahs (Out of which 12 Cottahs, 7 Chittacks 9 sq ft is the subject matter of present suit) earlier belonged to Dr. Prasanta Kumar Ghosh since deceased, who acquired title over the property over the said land by dint of Registered Sale Deed No. 2426 of 1947. Thus land measuring about 12 Cottahs 7 Chittacks and 9 sq ft is hereinafter called the 'said property' which is exclusively owned and possessed by the present plaintiff on the strength of a Registered Deed of sale No-5864 dated 22-02-2005. It was also contended by the petitioner that Dr. Prasanta Kumar Ghosh during his life time transferred alienated and conveyed land measuring about 15 Cottahs out of 19 Cottahs of land in favour of his full blood brother namely Chira Ranjan Ghosh and niece namely Madhumita Ghosh (Daughter of Chira Ranjan Ghosh) by executing a Registered Deed of Gift being No- 6841 for the year 1985 registered in the Office of Registrar of Assurance Kolkata vide Book No-1 Volume No-149 Page No-479, to 488 in equal share to both the donees ie. 7.8 Cottahs of land for each Donee. It is contended by the Petitioner that the first Donee namely Chira Ranjan Ghosh died intestate leaving behind his widow namely Pronati Ghosh and two daughters namely Madhumita Ghosh (second Donee) and Nandita Ghosh as the heirs being the relative specified in class-I to the schedule. Upon the death of Chira Ranjan Ghosh his 50 % share came through the aforesaid Deed of Gift being No-6441 for the year 1985 devolved upon the class-I heirs by operation of Hindu Law of Succession in equal share ie. 2.8 Cottahs for each heirs. In this situation Madhumita Ghosh (second

Donee) became the owner of 7.8 Cottahs 1+2.8 Cottahs = 10 Cottahs (Land of area 7.8 Cottahs came through Gift Deed + Land of area 2.8 Cottahs by inheritance from her father.) Thereafter Dr. Prasanta Kumar Ghosh died without any issue, and his wife predeceased him Dr. Prasanta Ghosh died intestate leaving behind two nieces viz Madhumita Ghosh and Nandita Ghosh as the heirs being relatives specified in the Schedule to the Act. At the time of death Prasanta Kumar Ghosh seized and possessed land measuring about 4 Cottahs in same Dag. Upon his death said immovable property devolved upon the said two nieces in equal share. Both the nieces of Prasanta Kumar Ghosh were unmarried. During life time said Madhumita Ghosh and Pronati Ghosh transferred, alienated and conveyed 5 ½ Cottahs of vacant land by virtue of Registered Sale Deed out of aforesaid property and as such they became joint owners of 13 ½ Cottahs of land with structure. A piece of land was encroached in Municipal Roads viz. Dindayal Road and Mandir Road. Ultimately a) Madhumita Ghosh, b) Pronati Ghosh and c) Nandita Ghosh became the joint owners of land measuring about 12 Cottahs 7 Chittacks 9 sq ft. The property measuring about 12 Cottahs 7 Chittacks and 9 sq ft was transferred alienated and conveyed to the petitioner/plaintiff by virtue of a Registered Deed of Sale being No. 5864 dated 22.02.2005. In the month of November 2008 Madhumita Ghosh, Pronati Ghosh and Nandita Ghosh, instituted a Suit being Title Suit No-215 of 2008 before Learned Civil Judge (Sr. Division) 2nd Court at Barasat against the present Plaintiff/Petitioner, seeking declaration that Deed of Sale No. 5864 of 2005 dated 22.02.2005 registered in the Office of Registrar of

Assurance, Kolkata is void and forged Deed and not binding upon Madhumita Ghosh, Pronati Ghosh and Nandita Ghosh who are absolute owners of the suit Land, and other consequential relief. The said suit being Title Suit No-215 of 2008 was dismissed on contest by the judgment and decree dated 15.12.2017.

It is contended by the plaintiff/petitioner that Madhumita Ghosh died on 14-02-2018, leaving behind no legal heirs, who intermeddles with the estate of the deceased, and both Madhumita Ghosh and Nandita Ghosh were unmarried.

Learned Trial Judge by Order dated 03-08-2023 was pleased to dispose of the application filed by the petitioner/plaintiff under Order 22 Rule 4A CPC by observing and directing as follows:

‘On perusing the application filed by the plaintiff under Order 22 Rule 4A CPC dated 26.02.2019, it appears that the plaintiff has stated in his application that the defendant No. 1 Pronati Ghosh expired on 12.03.2016 leaving behind the defendant No. 2 as her sole legal heir / successor. Thereafter, the defendant No. 2, Madhumita Ghosh expired on 14.02.2018. It is submitted by the plaintiff that there are no other legal heirs of the defendant. However, from the said application it appears that Pronati Ghosh had two daughters Madhumita Ghosh and Nandita Ghosh and the plaintiff himself pointed out the undivided share of Pranati Ghosh, Madhumita Ghosh and Nandita Ghosh. Amongst the above three, Pronati Ghosh and Madhumita Ghosh had expired. However, the said Nandita Ghosh is still surviving.

Furthermore, it appears from the said application that one Dilip Kumar Roy had filed writ application before the Hon'ble Court to take the dead body of deceased Madhumita Ghosh. From the order passed by the Hon'ble Court dated 12.03.2018 in writ petition WP No. 4018 (W) of 2018 it appears that the writ petitioner is the maternal uncle of the deceased Madhumita Ghosh. Thus, it cannot be said with impunity that there are no legal heirs of the deceased defendant No. 1 and 2.

Furthermore, the Hon'ble High Court at Calcutta had passed an order in writ petition WP 5945 (W) of 2018 on 03.12.2018 in which it has passed direction that the writ petitioner or any body interested in the property may prove their respective title before a Civil Court of competent jurisdiction and the possession of the property with the police authority shall be abide by the result.

Now, Order 22 Rule 4A CPC deals with the situation where there is no legal representative of any party who has died.

It is evident that only in those cases where there is enough material before the court to draw conclusion that there is no legal representative of the deceased party that it will proceed according to the requirements of Order 22 Rule 4A CPC. Here it appears that the plaintiff himself is uncertain about the legal heirs of the deceased defendant and is praying for information about the legal heirs of the deceased defendant. It is the duty of the plaintiff to bring on

record the legal heirs of this defendant or make it certain by whatever means that indeed there is no legal representative of the deceased party.

Here it appears that the petitioner / plaintiff has failed to establish its plea under the application filed under Order 22 Rule 4A CPC.

Thus, in view of the above discussion and the order passed by the Hon'ble Court in WP 5945 (W) of 2018 on 03.12.2018, this court does not think it apt to allow the application filed by the defendant under Order 22 Rule 4A CPC.

Hence it is

ORDERED

The application under Order 22 Rule 4A CPC stands rejected.

Fixing **16-12-2023** for taking steps by the plaintiff upon the legal heirs of the deceased defendant.'

The petitioner being aggrieved by the Order dated 03-08-2023 passed by the Learned Trial Judge has come up with this application under Article 227 of the Constitution of India.

Pursuant to filing of this application notice was served upon Dilip Kumar Ray who pursuant to the death of Madhumita Ghosh sole defendant filed writ petition claiming the body of Madhumita Ghosh but he did not appear inspite

of service of notice, thus the case was taken up for hearing in the presence of the petitioner only.

Heard Learned Advocate for the petitioner. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that Learned Trial Judge erred in rejecting the petition under Order XXII Rule 4A of the Code of Civil Procedure when there is no legal heir of the deceased defendant. Learned Advocate further submits that Learned Court erroneously recorded that Nandita Ghosh is still surviving. Learned Advocate also submits that Learned Court erroneously deemed Mr. Dilip Kumar Ray as the Legal heir of the deceased defendants.

Before proceeding to deal with the issue it is necessary to consider the provisions contained in Order XXII Rule 4A of the Code of Civil Procedure.

Order XXII Rule 4A of the Code of Civil Procedure provides as follows:

4A. Procedure when there is no legal representative- 1). if in any suit it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative the Court may on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person or may by order appoint the Administrator General or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order

subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as if he would have been bound if a personal representative of the deceased person had been a party to the suit.

2) Before making an order under this rule the Court a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

Upon plain reading of the provision contained in Sub-Rule 1 Rule 4A of Order XXII of the Code of Civil Procedure it will appear that when the Court is satisfied that any party who has died during the pendency of the suit has no legal representative the Court may on the application of any party to the suit either proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit. Now while considering application under Order XXII Rule 4A, a doubt may enter into the mind of the Court as to existence of legal heirs of a deceased party. In such a case the Court has Power under Sub-Rule 2(a) of Rule 4A of Order XXII CPC to require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit. Apart

from the power provided in sub Rule 2(a) of Rule 4A. the Court has inherent Power under Section 151 of the Code of Civil Procedure to direct the applicant to make necessary paper publication in this regard or may appoint a Special Officer to cause enquiry and submit report about existence of legal heir of the deceased party or may cause enquiry by any authority it thinks fit and in accordance with law. Upon the procedure provided in sub-Rule 2(a) of Rule 4A Order XXII CPC being exhausted or such procedure which the Court exhausts in exercise of inherent power a decision has to be taken on the application under Order XXII Rule 4A CPC. In the event it appears from the report submitted that there are legal representative of deceased party or any legal representative appears in Court with application and proof, the application under Order XXII Rule 4A CPC will stand dismissed and the concerned legal representative will be impleaded as a party. Where the procedure is exhausted and no legal representative of deceased party is ascertained the Court may either proceed in the absence of a person representing the estate of the deceased person or may appoint such officers as provided in Rule 4A (1) of Order XXII CPC. Where upon disposal of application under Rule 4A Order XXII CPC an Officer is appointed to represent estate of the deceased person and legal representative of deceased person is traced out, subsequently, the concerned legal representative will be impleaded as party and the officer appointed will stand discharged.

In the instant case the Learned Trial Court while considering the application under Order XXII Rule 4A CPC erred in observing that Nandita

Ghosh is still surviving when the petitioner in his application has stated that Nandita Ghosh died. Learned Trial Court further erred in observing that Dilip Kumar Ray who had earlier filed a writ petition appears to be maternal uncle of the deceased Madhumita Ghosh and holding that the plaintiff/petitioner himself is uncertain about the legal heirs of the deceased defendant when the petitioner/plaintiff have specifically stated that there are no legal heirs of the deceased defendant.

In the event the Learned Trial Court was of the view that Dilip Kumar Ray was maternal uncle of the deceased defendant and has lawful interest in the estate of the deceased a direction could have been issued to serve notice and the application under Order XXII Rule 4A upon Dilip Kumar Ray or direction for paper publication could have been made or a Special Officer could have been appointed to cause enquiry. By rejecting application under Order XXII Rule 4A and directing petitioner/Plaintiff to take steps upon Legal heirs without adjudicating application under Order XXII Rule 4A by causing necessary enquiry Learned Court erred in law.

The object of Rule 4A as observed in different Judicial decisions is to provide that a plaintiff should not suffer if the defendant dies during the pendency of the suit without leaving any legal representative who can proceed with the suit or if there is a legal representative he is not traced. The Law Commission of India in its Fifty-Fourth Report felt that in view of the fact that

with increasing urbanization and growing complexity of society cases where legal representatives cannot be ascertained are likely to increase.

Regarding construction of Order XXII Rule IVA it is necessary to consider some Judicial Pronouncements, regarding construction of statutes.

In the case of X VS NCI Delhi reported in 2023 (9) SCC. P-467 the Hon'ble Supreme Court observed as follows:

31. The cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualize. Ordinarily, the language used by the legislature is indicative of legislative intent. In *Kanai Lal Sur V. Paramnidhi Sadhukhan*, Gajendragadkar, J. (as the Learned Chief Justice then was) opined that “the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself”. But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be “illuminated by the goal, though guided by the word” .³⁰ Aharon Barak opines that in certain circumstances this may indicate giving “an unusual an exceptional meaning” to the language and words used.³¹

32. Before we engage in the exercise of purposive construction, we must caution that a court's power to purposively interpret a statutory text does not imply that a Judge can substitute legislative intent with their own individual notions. The alternative construction propounded by the Judge must be within the ambit of the statute and should help carry out the purpose and object of the Act in question.

33. The interpretation of a subordinate legislation should be consistent with the enabling Act. ³² A subordinate legislation must be reasonable and in consonance with the legislative policy. It should be interpreted in a meaningful manner, so as to give effect to the purpose and object of the enabling Act. The interpretation which is in consonance with the statutory scheme and gives effect to the statute must be adopted.

34. In *Principles of Statutory Interpretation* by Justice G.P. Singh, it is stated that a statute must be read in its context when attempting to interpret its purpose. ³³ Context includes reading the statute as a whole, surrounding circumstances and the mischief that it was intended to remedy. ³⁴ The treatise explains that:

“For ascertaining the purpose of a statute one is not restricted to the internal aid furnished by the statute itself, although the text of the statute taken as a whole is the most important material for ascertaining both the aspects of “intention”. Without intending to lay down a precise and exhaustive list of external aids, Lord Somervell has stated: “The mischief against which the

statute is directed and, perhaps though to an undefined extent the surrounding circumstances can be considered. Other statutes in pari materia and the state of the law at the time are admissible.” These external aids are also brought in by widening the concept of “context” “as including not only other enacting provisions of the same statute, but its Preamble, the existing state of the law, other statutes in pari materia, and the mischief which the statute was intended to remedy.” In the words of Chinnappa Reddy, J.: “Interpretation must depend on the text and the context. They are bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.”

Now if purposive construction is to be given to Rule 4A of Order XXII of the Code of Civil Procedure it is to be decided as to whether ‘no legal representative includes’ no knowledge or information or belief of applicant about existence of legal representative of deceased.

It is quite natural that parties to the suit will normally not be in a position to know as to who is the legal representative of the rival party unless parties are related to each other or are neighbours. Thus a party who having no knowledge about legal heirs of deceased party and being unable to know from the Learned Advocate of the deceased party or could not obtain information from reasonable enquiry about Legal heirs of deceased party states in petition

under Order XXII Rule 4A CPC that he could not derive information about legal heirs of deceased party his petition cannot be dismissed. In such a situation also liberal view should be taken in disposing application under Order XXII Rule 4A CPC. Court upon receiving application under Order XXII Rule 4A CPC has power and discretion to direct publication in newspaper or to cause enquiry as to existence of legal representatives of deceased party unless Court is of the view that enquiry or paper publication is not necessary, and the application can be allowed. The course of enquiry about legal heirs is always open before the Court and the Court at the preliminary hearing of application under Order XXII Rule 4A may appoint an Officer to represent estate of deceased party and proceed with the suit, subject to further enquiry.

It cannot be expected that a litigant will go from pillar to post to find out the legal heirs of deceased party. Thus application under Order XXII Rule 4A can be dismissed at the threshold only in very exceptional circumstances. The letter and spirit of Rule 4A should be considered and a liberal view should be taken in deciding application under Order XXII Rule 4A CPC, as the guiding Principle and object behind substitution as mentioned in the amending Rule 4A Order 22 CPC is that a plaintiff should not suffer if the defendant dies during pendency of the suit without having a legal representative who can proceed with the suit or where there is a legal representative who could not be traced.

In the facts and circumstances mentioned hereinabove this Court is of the view that the Order passed by the Learned Trial Judge cannot be, sustained and the same should be set aside. Although in such cases the matter is usually remitted back to Trial Court for re-consideration but to expedite the matter this Court is of the view that application under Order 22 Rule 4A CPC should be allowed and Special Officer should be appointed to represent the estate of the deceased defendant. Thus Sri Tapan Mitra Learned Advocate having ph no-9433389488/6289399293 and Sri Prosenjit Chatterjee Learned Advocate having ph no-8420443716, are appointed as Joint Special Officers to represent the estate of the deceased. Learned Special Officers upon receiving copy of this order shall appear before the Learned Trial Court within 10 days and take symbolic possession of the suit property. Learned Special Officers shall make enquiry from members of the locality where the suit property is situated and also from Dilip Kumar Roy as to whether there are legal heirs of deceased defendant Madhumita Ghosh. In the event Learned Special Officers obtain information with regard to legal heirs of deceased defendant such report should be submitted before the Learned Trial Court. Learned Trial Court upon receiving such report shall discharge the Special Officers and implead the legal heirs of the deceased defendant. In the event no information is obtained regarding legal heirs, the Learned Special Officers shall take all reasonable steps to defend the suit after filing report. The initial remuneration of the Learned Special Officers is fixed at Rs 10,000/- each. Further remuneration is

to be paid with the progress of the suit, and subsequent function of the Learned Special Officers to be fixed by Learned Trial Court.

Hence this Revisional Application stands allowed. Order dated 03/08/2023 passed by Learned Civil Judge Senior Division 2nd Court at Barasat in T-S-218 of 2008 is set aside. The application under Order 22 Rule 4A of the Code of Civil Procedure filed by the petitioner plaintiff is allowed. Learned Trial Court shall proceed with the suit upon appearance of the Learned Special Officers. Learned Special Officers shall discharge their functions as observed above and on the basis of such other directions as may be issued by Learned Trial Court.

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

(Biswaroop Chowdhury, J.)