

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMA 55 of 2016
With
CAN 2 of 2024

Bijit Mridha and Ors.
-vs-
Radhey Shyam Sarkar and Ors.

For the appellants : Mr. Supriyo Chattopadhyay,
Mr. Sudip Kr. Maiti,
Ms. Debosri Chatterjee.

For the respondent
Nos. 1 to 6 : Mr. Animesh Paul.

Heard on : September 7, 2016, March 24, 2025.
Judgment on : March 24, 2025.

Sabyasachi Bhattacharyya, J.:

1. Affidavit of service filed today be kept on record. The appeal and the application are taken up for hearing together on consent of the parties due to the short conspectus of the same.

2. The appeal arises out of a suit filed by the respondents for declaration of their title and for consequential reliefs. The said suit was based on rights claimed by inheritance by the plaintiffs/respondents through one Panchimoni Dasi.
3. The suit was ultimately dismissed on contest since the defendants/appellants were successful in producing title deeds in their favour, executed by a person in whose favour the said Panchimoni had gifted the suit property.
4. In the appellate court, the pleadings were amended at the behest of the plaintiffs/respondents, who relied on a purported death certificate of the said Panchimoni, which apparently showed that Panchimoni had met her demise prior to the execution of the gift deed in favour of the vendor of the appellants.
5. On such ground, by the impugned judgment and order, the appellant court remanded the matter to the trial court for a reconsideration on the basis of such death certificate.
6. By way of CAN 2 of 2024, an application under Order XLI Rule 27 of the Code of Civil Procedure, the appellants seek to produce the certified copy of a judgment passed by a writ court whereby the very same death certificate, on the premise of which the impugned remand order was passed, was set aside.

7. It is thus submitted by the appellants that since the very basis of the remand order goes, the same should be set aside.
8. Learned Counsel for the respondents opposes the prayer of the appellants and contends that in the absence of any pleading to the written statement of the appellants in the court below regarding the filing of the writ petition or the attending circumstances leading to the order of the writ court, the same cannot be allowed. Moreover, it is argued that at this juncture, the appellants cannot have a right to produce the judgment and order of the writ court.
9. However, we find that the server copy/certified copy of the judgment and order of the writ court dated September 20, 2024 passed in WPA 19079 of 2015 has been sought to be furnished as additional evidence. We find therefrom that not only was the judgment passed on contest but the present respondents were represented therein.
10. Moreover, since the judgment of the learned Single Judge of this court clearly narrates the attending facts, no further amendment to the pleadings are necessary for taking the same on record.
11. Also, the judgment and order of the writ court was passed subsequent to the passing of the judgment and remand order

impugned in the appeal and, as such, could not have been produced at or before the passing of the impugned judgment and order.

12. Although the very death certificate on the basis of which the remand order was passed has now been set aside by a competent writ court, since learned Counsel for the respondents takes a plea that the said quashing was on technical grounds and the respondents have already applied for getting a fresh death certificate, we are of the opinion that the ends of justice would be substantially sub-served in the event the impugned judgment and order is modified to the effect that a further opportunity be given to the parties to produce documents in support of the contending claims of the parties regarding the date of death of Panchibala.
13. Accordingly, CAN 2 of 2024 is allowed, thereby taking on record the original certified copy, which is filed today in court, a copy of which is annexed to the application. Since the said certified copy of a judicial order, which is a public document, can be admitted as secondary evidence, we permit the same to be produced as additional evidence.
14. By the said order dated September 20, 2024, passed by a learned Single Judge of this court in WPA 19079 of 2015, the

death certificate of Panchimoni, on the premise of which the remand order was passed, was itself set aside, we are of the opinion that the impugned judgment and remand order cannot stand in its present form.

15. However, since the respondents have already applied for a new death certificate and keeping in view that the death certificate originally produced by them was quashed on certain procedural grounds, FMA 55 of 2016 is partially allowed on contest, thereby modifying the impugned judgment and remand order dated May 6, 2015 passed by the learned Additional District and Sessions Judge, Fast Track Court-3, Basirhat, District – North 24 Parganas in Title Appeal No. 52 of 2009 to the effect that the matter be remanded to the trial court for a fresh hearing upon giving opportunity to both parties to lead fresh evidence on the date of death of Panchimoni Dasi alias Panchibala.
16. We make it clear that the quashed death certificate, on which the respondents had relied on and which was the premise of the impugned judgment and remand order, shall not be taken into consideration by the learned trial Judge, but it will be open to the learned Trial Judge to accommodate fresh evidence, if

adduced by either of the parties, to prove the actual date of death of Panchimoni Dasi alias Panchibala.

17. It is expected that the learned Trial Judge shall decide the suit afresh in the light of the above observations as expeditiously as possible, preferably within eight months from the date of communication of this judgment and order to the learned Trial Court.
18. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)