

19.03.2025
Item No.2
PG/KS
Ct. No.7

C.O. 1403 of 2015

**Sri Sankar Narayan Das (since deceased)
Represented by Smt. Mira Das & Anr.**

Versus

Asoke Kumar Banerjee & Ors.

Mr. Sagnik Chatterjee

Mr. Sayan Mukherjee

Mr. Biswajit Das

.....For the Petitioners

1. None appears on behalf of the opposite parties. Mr. Sagnik Chatterjee, learned advocate appears on behalf of the petitioners. The matter is pending since 2015 and at no point of time the opposite parties appeared before the Hon'ble court . Hence, the matter is taken up for hearing.
2. The instant revisional application is directed against the order dated February 6, 2015 passed by the learned Civil Judge (Senior Division), 7th Court at Alipore, South 24 Parganas in Title Suit No.108 of 1966 whereby the learned Court has been pleased to turn down the prayer for reconstruction of record as filed on behalf of the petitioners.
3. It is submitted that one, Rai Mohon Das, the predecessor-in-interest of the petitioners filed a suit for realization of mortgage debt for a sum of Rs.23,474/- bearing Title Sit No.108 of 1966 against the predecessor in interest of the opposite parties before the learned Sub-ordinate Judge (presently designated as learned Civil Judge (Senior

Division), 7th Court at Alipore, Sourth 24 Parganas). The suit was contested by the defendants by filing their joint written statement and defendant no.10 filed a separate written statement.

4. On April 30, 2017, the said suit finally came up for hearing and the learned Court was pleased to pass a decree in preliminary form against the defendant nos. 2 to 10 on contest and *ex parte* against the other defendants directing them to pay an amount of Rs.23,474/- within a period of three months with interest with the further observation that in case of default, the plaintiff/predecessor of the petitioners will be entitled to pray for final decree.
5. A first appeal being, F.A. No.573 of 1970 was preferred challenging the said judgment and decree and on September 29, 1972, an order of stay of drawing up of final decree in the suit was passed by the Hon'ble Division Bench of this Court in the first appeal being F.A. 573 of 1970 on the basis of an undertaking given by the appellants/defendants therein giving statement that they would deposit the entire decretal cost before the learned Trial Court within December 15, 1972 and in default, the order would be vacated.
6. The appellants failed to comply with such order dated April 30, 1973 and accordingly, such first appeal being, F.A. 573 of 1970 stood dismissed.

7. The learned Additional Registrar, High Court, Appellate Side, Calcutta was pleased to direct the Lower Court Records (presently TCR) to be sent down to the learned Trial Court and the said order was complied with and the records were duly sent down to the learned Court under L. No.3582 on July 30, 1973.
8. It was formally recorded that the aforesaid first appeal stood dismissed in terms of the aforesaid order dated April 30, 1973. In the year 1977, Rai Mohan Das, the original plaintiff made a Will, wherein the present petitioners were the beneficiary and the mother of the petitioners Smt. Ashalata Das was made one of the executrixes of the said Will.
9. Smt. Ashalata Das prayed for probate before the learned Chief Judge, City Civil Court at Calcutta and a probate was granted to Smt. Ashalata Das, who died intestate on August 15, 2006 and the present petitioner was substituted as the sole plaintiff of the said Title Suit No.108 of 1966, who filed the revisional application and subsequently expired and the present petitioners were substituted as legal heirs of the said original petitioner.
10. After death of Smt. Ashalata Das, the present petitioners made a thorough search for papers relating to the aforesaid Title Suit No.108 of 1966, which was not available and he took out the certified copy of the Suit Register of the aforesaid suit

and came to know about the preliminary decree, which was drawn in respect of the said title suit. A petition for drawing up of final decree in Title Suit No.108 of 1966 was filed on December 4, 2012 before the learned Civil Judge (Senior Division), 7th Court at Alipore, South 24 Parganas when the learned Judge directed the office to trace out the record within January 14, 2013. Since thereafter on several dates, on account of non-availability of the records, the matter was adjourned and subsequently on April 5, 2013, the present petitioners filed an application for reconstruction of the said suit and on September 9, 2013, an amended application for reconstruction was filed on behalf of the said petitioners.

11. Thereafter, on account of non-appearance of the defendants/opposite parties, the learned Court was pleased to direct ex parte hearing of the said petition for reconstruction and vide order dated November 5, 2014, intimation was given by the learned Court to the learned District Judge at Alipore about the non-availability of record of Title Suit No.108 of 1966 and prayed for permission for reconstruction of the same.

12. The learned District Judge in reply to the same, vide Memo No.6132-AR dated November 10, 2014 informed the learned Civil Judge (Senior Division), 7th Court at Alipore, South 24 Parganas that Civil Rules and Orders of the High Court,

Calcutta do not authorize the reconstruction of records and directed the learned Civil Judge to fix responsibility by December 8, 2014.

13. On February 6, 2015, the learned Civil Judge (Senior Division), 7th Court at Alipore, South 24 Parganas was pleased to reject the petition for reconstruction. Being aggrieved by the said order, the instant revisional application was filed.
14. It is submitted on behalf of the learned advocate for the petitioners that pursuant to a specific provision envisaged in the Civil Rules and Orders in Chapter-22 Rules 477 and specifically 477(10), the Court has ample power to reconstruct the case record in case of non-availability of the record.
15. Therefore, the learned Court erred in dismissing the prayer on behalf of the petitioners, which has practically put an end in claiming their lawful right against the opposite parties when the predecessors of the present petitioner were knocking the door of the Court since 1966.
16. Heard the submission. It is a settled proposition of law that in case of non-availability of records, the duty cast upon the concerned Court and/or the Principal District Judge to fix the responsibility of the person concerned under whose custody the record was lying at the pertinent point of time. At the same time, the Court is not denuded of the power to re-

construct the record in order to enable the litigant to proceed with the case. The procedure for reconstruction of record is laid down in Chapter XXII of the Civil Rules and Order of Calcutta High Court- where it has been said that the presiding officer will have to take necessary steps for reconstruction of the record . In the instant case, there is no denial of the fact that the learned District Judge vide his Memo failed to consider the true spirit of the Civil Rules and Orders and in stead of taking necessary steps in the administrative side. The learned Civil Judge (Senior Division), 7th Court at Alipore, Sourth 24 Parganas also failed to apply his mind in terms of the Civil Rules and orders and the power under Section 151 of the Code of Civil Procedure under which provision the application was filed before him. It is pertinent to mention that the matter was pending before the Court since long and subsequently after taking recourse to the judicial forum, the present petitioners being entitled to proceed with the case filed the application after being informed about the non-availability of the record to reconstruct the case record in the year 2014. Therefore cannot be any fault on the part of the petitioners and it is the Court who was to proceed on the parameters, as mentioned in the Civil Rules and Orders and the Code of Civil Procedure in

order to enable the litigant to proceed with their respective cases.

17. In view of the above, the instant revisional application stands allowed.

18. The order passed by the learned Civil Judge (Senior Division), 7th Court at Alipore, South 24 Parganas dated February 6, 2015 in Title Suit No. 108 of 1966 is set aside with a direction to take necessary steps to reconstruct the records within a period of one month from the date of communication of the order.

19. No costs.

20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(CHAITALI CHATTERJEE (DAS), J.)