

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 Supratim Bhattacharya

FA 111 of 2023
With
CAN 1 of 2023

Uttara Sarkar and Ors.
Vs.
Laxmi Mondal and Ors.

For the appellants : Mr. Probal Kumar Mukherjee,
Ld. Snr. Adv.
Ms. Shebatee Datta, Adv.

For the respondents : Mr. Sourav Sen, Ld. Snr. Adv.
Ms. Adrisnata Chakraborty,
Ms. Subhangi Bhattacharya,
Md. Obaid, Adv.

Heard on : November 4, 2025.

Judgment on : November 4, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred against a judgment and decree whereby the learned Trial Judge, in a letters of administration proceeding, while deciding an application filed by the respondents/defendants under Order XII Rule 6 of the Code of Civil Procedure, allowed the said application and granted probate.
2. Learned senior counsel appearing for the appellants submits that the appellant no. 1, who deposed as OPW1 in the letters of administration suit, allegedly admitted the existence of the Will, which was the very premise of the application under Order XII Rule 6 of the Code of Civil Procedure filed by the defendants/respondents.
3. Learned senior counsel contends that the appellant no. 1/OPW1 is an illiterate lady and her evidence and the translation of the same in English has to be taken in proper perspective. It is contended that one stray sentence whereby it was recorded that she had no objection if the petitioners in the case get a decree according to their prayer, cannot be taken in isolation, whereas the entire tenor of the rest of her evidence and her specific written objection shows that the appellant no.

1 contested the execution of the Will and the validity of the same tooth and nail.

4. Learned senior counsel appearing on behalf of the appellant further argues that it is settled law that to come within the ambit of an “admission” under Order XII Rule 6 of the Code of Civil Procedure, such “admission” has to be clear and unambiguous. If there is scope of further interpretation either way, the said statement cannot be construed as an admission.
5. Learned senior counsel appearing for the respondents submits that it is clear from the cross-examination of OPW1 that she categorically stated that she had no objection if the letters of administration was granted as per the prayer of the petitioners/plaintiffs in the letters of administration proceeding.
6. That apart, it is pointed out by learned senior counsel for the respondents that OPW1 also stated in her cross-examination that she does not know the contents of the evidence-in-chief filed by her.
7. Such statement, it is argued, itself vitiates the entire contents of the examination-in-chief and there being no application for recall of the said witness, it is argued that the premise of the

objection to the letters of administration proceeding itself ought to go.

8. Learned senior counsel appearing for the appellants contends in reply that the so-called admission was not clear and unambiguous and it is reiterated that the same could have been explained away in hearing. However, the learned Trial Judge, while deciding the Order XII Rule 6 application, decided the main letters of administration proceeding on its merits without affording any opportunity to the present appellants to address the said proceeding on its merits.
9. On a bare perusal of the impugned judgment and decree, as comprised in order no. 61 dated April 12, 2024, we find that the order commences with the statement that it was a date fixed for passing order in respect of the petition under Order XII Rule 6 of the Code of Civil Procedure, thereby indicating that the entire scope of consideration before the learned testamentary court was the adjudication of the application under Order XII Rule 6 of the Code, and not the hearing of the main letters of administration suit.
10. However, while so deciding, the learned testamentary Judge went beyond the said application and entered into the merits of

the main suit and appreciated the evidence led by the parties at length. The learned testamentary Judge, *inter alia*, found that the petitioners (present respondents), through the evidence of PW1 and PW2, had been able to prove that the Exhibit 5 (Will) was executed on December 11, 2001 and registered on December 12, 2001 and it was actually executed by the testator duly. It was further found that the testator was physically fit and mentally alert at the time of execution. The findings following thereafter in the impugned judgment also go on to show that the learned Judge adjudicated the main suit on merits without giving any opportunity to the appellants to address the suit on its merits although, in fact, the very opening sentence of the impugned judgment shows that the consideration of the court was confined only to the application under Order XII Rule 6 of the Code of Civil Procedure and to the alleged admission, if any, on the part of the present appellant no. 1 in her evidence.

11. Thus, the learned Trial Judge evidently traversed beyond the scope of the adjudication before the said court and decided the main suit on merits while deciding only the application under Order XII Rule 6 of the Code.

12. Apart from such patent jurisdictional error, we find from a careful, comprehensive and meaningful perusal of the alleged admission of the appellant no. 1 as OPW1 in her cross-examination, that the said sentence was only a stray statement. The said statement is as follows: "I have no objection if the petitioners of this case get decree according to their prayer".
13. Apart from the fact that the OPW1 is an illiterate lady, it also has to be taken note of that sometimes the purport of a statement actually made in vernacular is lost in translation.
14. Moreover, the said statement, which is sought to be portrayed as an admission, goes against the tenor and the grain of the rest of the evidence of the OPW1/appellant no. 1 as well as her categorical denial of the execution of the Will and the validity of the same in her written objection.
15. Hence, this court is of the opinion that the stray sentence in question of the OPW1 in her cross-examination could not be culled out in isolation and construed to be a clear and unambiguous admission of the plaint case in the letters of administration proceeding on the part of the OPW1/appellant

no. 1 and as such, the learned Trial Judge erred in law on such count as well.

16. In view of the above, FA No. 111 of 2023 is allowed on contest, thereby setting aside the impugned judgment and deemed decree being order no. 61 dated April 12, 2023 passed by the learned Additional District Judge, Second Court at Bongaon, District – North 24 Parganas in OS 06 of 2019 and remanding the matter to the testamentary court for a fresh adjudication on the merits of the case. The learned testamentary Judge shall now proceed from the stage which the suit had reached at the time of filing of the application under Order XII Rule 6 of the Code of Civil Procedure by the present respondents, and, upon granting adequate opportunity to the parties, shall decide the suit in accordance with law independently, without being unduly influenced on merits by any of the observations made above or in the impugned judgment.

17. It is expected that since the suit has been pending for quite some time now, the learned Trial Judge shall make endeavour to decide and dispose of the same as expeditiously as

possible, preferably within six months from the date of communication of this order to the learned Trial Judge.

18. CAN 1 of 2023 is disposed of consequentially.
19. There will be no order as to costs. Interim order, if any, stands vacated.
20. The parties shall act on the server copy of this order, duly downloaded from the official website of this court.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

AD-17
Ct No.16
04.11.2025
(SSS)