

S/L 39
08.01.2025
Court. No. 3
Suvayan

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

CO 155 of 2023

**Biswanath Das & Ors.
Vs.
Bhupen Chandra Barman @
Bhoben Barman & Anr.**

Mr. Hillol Saha Podder

...for the petitioners.

*Mr. Subhasish Misra
Mr. Satyajit Paul*

..for the opposite parties.

1. In this revisional application as filed under Article 227 of the Constitution of India the Order No. 104 dated 29.11.2023 as passed in Title Suit No. 09 of 2015 by the learned Civil Judge (Junior Division), Additional Court, Sadar, Cooch Behar is impugned.
2. By the impugned order learned Trial Court while allowing the plaintiffs' application under Section 151 of the Code of Civil Procedure marked a document being sale deed No. 1575 of 1996 as Exhibit – 3 which was initially marked as 'X' for identification.
3. In course of hearing of the instant revisional application Mr. Saha Podder has handed over a photocopy of the certified copy of the deposition of PW 1 as recorded in the said suit. Attention of this Court is drawn to page No. 2 of such deposition. It is submitted by Mr. Saha Podder that from the examination-in-chief of PW 1 it would reveal that the PW 1 tendered the original sale deed No. 1575 of 1996 and in the said examination-in-chief PW 1

categorically stated that he is not aware of the contents of such sale deed.

4. In course of his submission Mr. Saha Podder further draws attention of this Court to the cross-examination of PW 1. It is submitted that in the cross-examination the said PW 1 stated that he had filed the self-same sale deed where he had recorded his name as Bhupen Chandra Barman.
5. It is thus submitted by Mr. Saha Podder that by no stretch of imagination it can be said that the said sale deed No. 1575 of 1996 as tendered by PW 1 in the said suit has been proved in accordance with law under the provisions of the Evidence Act. It is thus contended by Mr. Saha Podder that learned Trial Court committed serious error of law in allowing the petition under Section 151 of the Code of Civil Procedure by admitting the said sale deed No. 1575 of 1996 into evidence.
6. *Per contra*, Mr. Misra, learned Advocate appearing on behalf of the plaintiffs/opposite parties contended before this Court that the learned Trial Court is very much justified in admitting the said sale deed into evidence inasmuch as in the cross-examination of PW 1 the said documents have been proved by PW 1 when answering to the question as put by the learned Advocate for the defendants.
7. On perusal of the entire materials as placed before this Court it appears to this Court that learned Trial

Court while passing the impugned order misdirected himself in allowing the said application under Section 151 of the Code of Civil Procedure since the said Court has miserably failed to appreciate the true spirit of Evidence Act for admitting a document into evidence. On close scrutiny of the evidence (both examination-in-chief and cross-examination) of PW 1 as recorded by learned Trial Court it appears to this Court on behalf of PW 1 no endeavor was made either in his examination-in-chief or in his cross-examination to prove the said deed No. 1575 of 1996 as required to be done for proving a document under the Evidence Act.

8. In view of such, this Court has got no hesitation to hold that the learned Trial Court is not at all justified in marking the said sale deed No. 1575 dated 07.03.1996 as an Exhibit – 3.
9. This Court thus finds sufficient merit in the instant revisional application.
10. Accordingly, the instant revisional application is allowed.
11. Consequently, the Order No. 104 dated 29.11.2023 is hereby set aside.
12. Consequently, the marking of sale deed No. 1575 dated 07.03.1996 as Exhibit – 3 is hereby expunged.
13. With the aforementioned observations, the instant revisional application being **CO 155 of 2023** is hereby disposed of.

14. Department is directed to forward a copy of this order to the learned Trial Court forthwith.
15. Liberty to communicate.
16. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)