

N.22S1
151/CL

CO 766 of 2026

Sri Omprakash Jaiswal
v.
Sri Audhesh Prasad Jaiswal & Anr.

24.03.26
SL-06
Ct-06
(S.R.)

Mr. Bhaskar Dwivedi
Mr. Rabi Ranjan Tiwari
Mr. Prashant Sekhar Pandey ... for the petitioner.

Mr. Anirban Roy
Mr. Debjit Base ... for the opposite party no.2.

1. This revisional application is directed against an order dated January 13, 2026 passed by the learned Civil Judge (Senior Division), Small Causes Court, Sealdah in Title Suit No.5 of 2025 whereby the petitioner's application under Order 18 Rule 16 of the Code of Civil Procedure, 1908 praying for immediate examination of one Raj Bali Shaw has been rejected.
2. Mr. Dwivedi learned advocate appearing for the petitioner submits that the petitioner has filed a suit for partition and in such suit, the petitioner intended to adduce evidence of one Raj Bali shaw, who is 86 years old and is suffering from various ailments. It is submitted that since the condition of his health is deteriorating day by day and peremptory hearing is yet to commence, therefore the plaintiff/petitioner thought it necessary to get the said witness examined immediately in terms of the provisions of Order 18 Rule 16 of the Code .

3. Learned advocate appearing for the petitioner submits that the learned Trial Court has rejected the petitioner's application without appreciating the urgency involved in the matter.
4. Mr. Roy, learned Advocate for the Opposite Party No. 2 has contended that no ground has been made out in the application under Order 18 Rule 16 of the Code for allowing urgent examination of the relevant witness. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Laxmibai (dead) through Lrs. & Anr. v. Bhagwantbuva (dead) through Lrs. & Anr.***, reported at **2013 (2) SCC (Civ) 480** he contends that mere advancement of age would not be sufficient for allowing an application under Order 18 Rule 16 of the Code.
5. Heard learned advocates appearing for the respective parties and considered the material on record.
6. The petitioner, in the application for examination of the witness before commencement of peremptory hearing has pleaded that the witness is 86 years old and is suffering from various ailments.
7. The petitioner seeks to tender in evidence and prove a family settlement/family panchnama executed in the year 1995, on the basis of the certified copy of the panchnama. It is the petitioner's case that such panchnama was exhibited in Title Suit No. 827 of 2017 pending before the learned Civil Judge (Senior

Division) 2nd Court at Barasat and as such it forms part of the records of the said case as an Exhibit.

8. To be precise, the petitioner has in his application under Order 18 Rule 16 pleaded that the “living witness is 86 years old and suffering from various ailments, his condition of health is deteriorating day by day”.
9. It is therefore not a case hinging only on the age of the plaintiff. It will however be incumbent on the petitioner to satisfy the Court as regards the ailments, which the witness is allegedly suffering from.
10. The order impugned does not evince any consideration as regards the factor of age or the ailments. The learned Trial Court has not even disbelieved the petitioner’s case. To be precise, the order impugned has rejected the petitioner’s application only on the ground that the petitioner wishes to prove a Panchnama (family settlement) through a certified copy thereof, which in the opinion of the learned Trial Court is impermissible. Such a conclusion may not be correct in all situations and the same is certainly not the correct conclusion to arrive at in the facts of the present case at this stage while deciding an application under Order 18 Rule 16 of the Code. Furthermore, the learned Trial Court has held that the application has been made to “*bypass the procedure*

of proving the agreement”.

11. There is no consideration as to whether the immediacy projected by the petitioner in getting the witness examined is there or not. That should have been the focal point of consideration of the learned Trial Court. In not having done so, the learned Trial Court has failed to properly exercise jurisdiction vested in it.
12. As regards the judgment of the Hon’ble Supreme Court in the case of **Laxmibai** (supra), the proposition laid down by the Hon’ble Supreme Court in the said case that age is not the sole determining factor in deciding applications under 18 Rule 16 of the Code, is salutary but the same would not help the opposite party in the facts of the present case. That was a case where the appellant was just above 70 years of age and was found to be hale and hearty. It was further observed in the said case that the appellant was not suffering from any serious ailment. In the case at hand the assertion is that the witness is 86 years old which is far far more than just above 70 years and it has been alleged that he is suffering from several ailments. The truth of the assertions has not been gone into by the learned Trial Court at all.
13. For all the reasons aforesaid, the order impugned is set aside. The learned Trial Court shall hear out the application under Order 18 Rule

16 filed by the plaintiff/petitioner afresh upon giving full opportunity to the petitioner to demonstrate his case and to the opposite parties to oppose the same, in accordance with law.

14. The learned Trial Court shall dispose of such application as expeditiously as the business of the learned Trial Court would permit and preferably within a period of one month from the next date fixed without granting any unnecessary adjournment to either of the parties.
15. CO 766 of 2026 stands disposed of with the above observations. No Costs.
16. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)