

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 3774 of 2023

With

IA NO: CAN 1 of 2025

Prafulla Kumar Ghosh since deceased, Sri Biswajit Ghosh

VERSUS

Smt. Sulekha Karati

For the petitioner:

Mr. Milan Ch. Bhattacharjee, Sr., Adv.
Ms. Sulagna Bhattacharya, Adv.

For the opposite party:

Mr. Bhagbat Choudhuri, Adv.

Last Heard on: February 13, 2026

Judgment on: June 19, 2026

Biswaroop Chowdhury,J:

This is an application for recalling the judgment and order dated 13th June 2025 passed in C.O. No-3774 of 2023. By order dated 13th June 2025 the Civil Revisional application C.O. No-3774 of 2023 was allowed after setting aside Order No-90 dated 12-09-2023 passed by Learned Civil Judge (Junior Division) 4th Court Howrah in Misc case No-4 of 2022 in Title Execution case No-9 of 2006.

The applicant who is the opposite party in CO. No. 3774 of 2023 has contended the facts which were subject matter of the revisional application CO. No. 3774 of 2023 by re-iterating the same in this application. Apart from the re-iterating the facts the applicant/opposite party has contended that from the judgment dated 13th June 2025 passed in CO. 3774 of 2023 it does not appear that the Court has exercised superintendence over the Trial Court to remove injustice and to rectify the error in exercise of jurisdiction and this court has failed to exercise jurisdiction in not deciding the fundamental point that the Trial Court is lacking jurisdiction in entertaining the suit. It is also contended that the superintending jurisdiction of this Hon'ble Court ought to have been exercised in this case when deed of gift was executed registered and accepted by the donee on 28-04-2003 and the suit was filed on 26-04-2004.

Thus from the contentions made in the petition and the prayer made it will appear that the applicant/opposite party has sought for Review of the Order dated 13th June 2025 passed in CO. No. 3774 of 2023.

Heard Learned Advocate for the applicant/opposite party and Learned Advocate for the petitioner perused the Order dated 13th June 2025 and materials on record.

Learned Advocate for the applicant/opposite party submits that the Revisional Application being CO. No. 3774 of 2023 was filed by Biswajit Ghosh petitioner challenging the order dated 12-07-2023 passed by the Learned Civil Judge (Junior Division) 4th Court at Howrah. During argument Learned

Advocate for the petitioner argued relying upon order dated 31-10-2022 passed by this Court and in reply submission were made by the applicant/opposite party that Order dated 31-10-2022 has been recalled on 18-10-2023 in CO No-2067 of 2018 with CO. No. 3004 of 2018 in CAN-5 of 2023 filed by opposite party Sulekha Karati. Hence it is clear that there is no infirmity that the Learned Advocate suppressed the Order dated 18-10-2023.

Learned Advocate further submits that the entire suit and subsequent revisional application filed by Prafulla Kumar Ghosh and application filed by Biswajit Ghosh suffered from vice of fraud emanating from the said Title Suit itself as such the revisional application be dismissed.

Learned Advocate also submits that in the said Judgment which is sought to be reviewed this Court upon recording the factum of said fraud did not decide the issue on merits.

Learned Advocate relies upon the following judicial decisions:-

Deepa Gaurang Murdeshkwar Katre. VS Principal VAV College of Arts and others.

Reported in (2007) 14 SCC-108.

Budhia Swain and others VS Gopihath Deb and others

Reported in (1999) 4 SCC P-396.

Director Horticulture Punjab and others VS Jagjevan Parshad.

Reported in (2008) 5 SCC-539.

Dharam Singh VS State of U.P.

AIR-2025 S.C. P-3897

Learned Advocate for the petitioner submits that the instant recalling application being CAN-1 of 2025 is not at all maintainable in the eyes of law. The defendant/Judgment Debtor applicant filed the application under 47 of the Code of Civil Procedure against the dead person and made an attempt to serve notice upon the deceased decree holder.

Learned Advocate further submits that the Learned Executing Court proceeded with the hearing of the said application under Section 47 of the Code of Civil Procedure against the deceased decree holder/opposite party without impleading the heirs and legal representatives on the ground that the decree holder/opposite party is not substituted in the Execution case being Title Execution Case No. 9 of 2006 without considering the provisions contained in Order XXII Rule 12 of the Code of Civil Procedure. Learned Advocate also submits that in the Judgment and Order dated 13th June 2025 passed in C.O. No. 3774 of 2023 all relevant points were considered. It is submitted that a Court having jurisdiction over the relevant subject matter has the power to decide and come to either right or wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional Court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law. In the event there is no

alternative remedy available in accordance with the existing provisions of in that case only then the court may consider the issue but such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the code.

Learned Advocate submits that the decisions of Shivdeo Singh and others reported in AIR-1963 S.C. P-1909. M/S Northern India Caterers (India) Ltd. reported in AIR-1980 S.C. 674 Kishore Kumar Khaitan and Anr reported in AIR-2006 S.C. 1474, Niyamat Ali Molla reported in (2007) 13 SCC-421. Dr. Karimunnase (Dead) by legal representative Smriti Madan Kansagra reported in (2023) 20 SCC-517 are not applicable to the facts of the case.

Learned Advocate has relied upon the following Judicial decisions:

My Palace Mutually Aided Co-operative society VS B. Mahesh and ors. reported in (2022) 19 SCC-806.

Budhia Scvain and others VS Gopinath Deb and others.

Reported in (1999) 4 SCC P.396.

Before proceeding to decide the issue it is necessary to consider powers of the Court to review its own order, which should also be followed in deciding recalling application.

Order XLVII of the Code of Civil Procedure deals with the power of Court to review its judgment and order.

Order XLVII CPC provides as follows:-

1. Application for review of judgment.

1) Any person considering himself aggrieved.

a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred,

b) by a decree or order from which no appeal is allowed or,

c) by a decision on a reference from a Court of small causes and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason desires to obtain a review of the decree passed or order made against him may apply for a review of judgment to the Court which passed the decree or made the order.

2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant or when being respondent he can present to the Appellate Court the case on which he applies for the review.

Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case shall not be a ground for review of such judgment.

Thus Order XLVII provides the conditions on which the judgment can be reviewed. Although the applicant submitted that fraud vitiates justice and relied upon different judicial decisions regarding fraud but the said judicial decisions cannot be applied in this application for review as the issue was already decided by assigning reasons in the judgment dated 13/06/2025 passed in C.O. No. 3774 of 2023. The applicant has failed to show as to how her case comes within the provision of Order XLVII CPC.

Moreover from paragraph 13 of this application the contentions made by the applicant will go to show that the applicant has intended that this Court sit in appeal over the Judgment dated 13/06/2025. The said paragraph is quoted as follows:

‘13. But from the judgment dated 13th June 2025 passed by His Lordship it does not appear that His Lordship has exercised superintendence over the Trial Court to remove injustice and to rectify the error in exercise of jurisdiction and His Lordship also failed to exercise His Lordship’s jurisdiction in not deciding the locus of Prafulla Kumar Ghosh and in not deciding the fundamental point that the Trial Court is lacking jurisdiction in entertaining the suit.’

Thus from the contention made in paragraph 13 it is clear that the allegations can be ground of appeal and not in review. It is held in different judicial pronouncements that Review cannot be an appeal in disguise.

The judgment dated 13th June 2025 passed in C.O. 3774 of 2023 was mainly on the issue that proceedings and order against dead person is a nullity. The applicant has not been able to convince that an order against a dead person is not a nullity. Thus this review application/recalling application is devoid of merit and the same should be dismissed. However with regard to the direction in order dated 13-06-2025 granting liberty to the applicant/opposite party/Judgment Debtor to make application for addition of parties and steps to be taken by Judgment Debtor to ascertain names of Legal heirs of deceased decree holder for the purpose of expediting the matter the order stands modified to the extent that a Special Officer be appointed to ascertain the names of Legal heirs of deceased decree-holder.

Thus M.S. Sukla Das Chandra Learned Advocate Ph-9830657430 is appointed as Special Officer. Learned Special Officer shall upon notice to the petitioner and opposite party and their Learned Advocates visit the suit property and ascertain the names of legal heirs of the decree holder Prafulla Kumar Ghosh since deceased, from the locality. Upon completing the enquiry Learned Special Officer shall submit report before Learned Trial Court. On the basis of the report of Learned Special Officer the Learned Trial Court shall consider the same, and issue necessary direction upon the opposite

party/Judgment Debtor so that heirs of deceased decree-holder are impleaded in Misc Case-4 of 2022 in connection with title execution Case 9 of 2006 and the same is proceeded with as observed in Judgment dated 13-06-2025 passed in C.O. 3774 of 2023.

Learned Special Officer shall complete the enquiry within 3 weeks from the date of communication of this order and submit report within one week thereafter before Learned Trial Court/Executing Court. Learned Special Officer shall be entitled to a remuneration of 700 G.M. to be paid by the petitioner Biswajit Ghosh. In the event Learned Trial Court is of the view from report that further enquiry is necessary the Learned Special Officer may be sent for further enquiry and further remuneration to be fixed by Learned Trial Court. In the event further enquiry is not necessary Learned Special Officer shall be discharged. On discharge Learned Special Officer shall receive 100 GM.

Thus this application CAN-1/2025 for recalling Order dated 13/06/2025 is dismissed. However certain directions issued in the said order stands modified as observed above. It is however made clear that this Court has not gone into the merits of the case and all points will be kept open. During pendency of hearing of Misc Case 4 of 2022 parties may seek adjournment in hearing of Title Execution Case No. 9 of 2006 for execution of the decree which may be considered.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)