

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Supratim Bhattacharya

F.M.A.T. 1224 of 2017
With
IA No. CAN 1 of 2017
(Old No. CAN 11023 of 2017)

Manoj Kumar Singh & Ors.
Vs.
Dolly Singh & Ors.

For the Appellants : Mr. Dyutiman Banerjee
Mr. Amartya Basu

For the Respondents : Mrs. Sohini Chakrabarty
No. 1 and 2 Ms. Prajaaini Das

Delivered On : 27.02.2026

Supratim Bhattacharya, J.:

1. The present miscellaneous appeal has been preferred by the appellants being aggrieved by and dissatisfied with an order of remand passed by the Ld. Additional District Judge, 15th Court Alipore, South-24-Parganas in Title Appeal No. 420 of 2016.

2. Factual Matrix

Before the Ld. Trial Court

One Dolly Singh and Rakhee Singh claiming themselves to be the wife and daughter of one Raja Singh, who used to work as a conductor at Lake Depot of the Calcutta State Transport Corporation,

has initiated the lis, being Title Suit No. 1560 of 2008 before the Ld. Civil Judge (Junior Division) 3rd Court at Alipore, South -24 Parganas, seeking to be declared as nominee entitled to all the death benefits of the said Raja Singh and has also prayed for permanent injunction restraining the Calcutta State Transport Corporation from releasing the entire death benefits including the arrears of pension, provident fund and gratuity to any third party or to the defendants namely Shiv Dulari Singh, Manoj Kumar Singh, Rajesh Kumar Singh and Rina Singh.

Through the plaint the plaintiffs namely Dolly Singh and Rakhee Singh have stated that the said Dolly Singh was married to Raja Singh on 27.07.1990 and Rakhee Singh has been born because of their wedlock. It has further been stated that Raja Singh has expired intestate on 26.04.2006 living behind the plaintiffs as his widow and minor daughter. It has also been stated that in the statement of accounts for the year 2003-2004 the name of Dolly Singh is depicted as the sole nominee of Raja Singh for the payment of the entire share of the provident fund lying in his name. It has also been stated that time and again written representations were made before several authorities namely the Manager of the Lake Depot, the Administrative Personnel Officer and the Managing Director of the Calcutta State Transport Corporation praying for release of the amount lying in the name of Raja Singh in his provident fund account. In spite of efforts made, neither any amount from the gratuity nor any amount of the provident fund lying in the name of Raja Singh has been released in

favour of the said plaintiffs. It has also been stated that on 28.10.2007 notice was sent to the concerned authority through her Ld. Advocate to release the entire death benefits including the arrear of pension, provident fund and gratuity lying in the account of Raja Singh and the said notice is deemed to be a notice under Section 80 of the Code of Civil Procedure, though no specific section has been mentioned in the said notice. It has also been stated that on 07.04.2008 a reply from the Senior Audit Officer-II, Pension cell of the Calcutta State Transport Corporation has been received mentioning about the succession certificate and case No. 156 of 2006 before the Court of Ld. District Delegate at Alipore wherein Shiv Dulari Singh has claimed the death benefits of Raja Singh. It has also been stated that vide letter dated 07.05.2008 the plaintiff has requested the authority not to release any fund to Shiv Dulari Singh or anyone without adjudicating the dispute between them.

In the said title suit the defendants No. 2 to 5 entered appearance and filed written statement. Through the written statement the defendants have stated that Raja Singh alias Bhagawan Singh married Shiv Dulari Singh in the year 1975. It has also been stated that Raja Singh never married Dolly Singh and the question of a daughter of Dolly Singh does not arise. It has also been alleged that Raja Singh alias Bhagwan Singh was not at all the husband of Dolly Singh and taking similarity of the name the said Dolly Singh in collusion with some frivolous persons has made false claim. It has also been stated that there is no nomination form in this regard and the same is out of fraud and Raja

Singh cannot make such nomination. The CSTC authority had initially appeared in the title suit and had filed written statement but ultimately did not contest as such the suit was fixed for ex parte hearing against the authority.

In the trial court the following issues were framed :

ISSUES

- 1. Whether the suit is maintainable in its present form and in law?*
- 2. Whether plaintiffs have any cause of action to file the instant suit?*
- 3. Whether plaintiff no. 1 is the legally married wife of Raja Singh.*
- 4. Whether plaintiffs served any notice u/s 80 C.P.C.*
- 5. Whether plaintiff no.1 is the sole nominee of Late Raja Singh in respect of his provident fund.*
- 6. Whether the court fees paid is correct ?*
- 7. Whether the plaintiffs are entitled to the reliefs as prayed in the plaint.*
- 8. What other relief/reliefs if any plaintiffs are entitled to?*

On behalf of the plaintiffs two witnesses deposed they are PW1 Dolly Singh and PW2 Rakhee Singh.

The following documents have been exhibited on behalf of the plaintiffs:

- 1. Document: Original PAN Card of P.W.2. Exhibit-1*
- 2. Two original voter cards of Plaintiff Nos.1 & 2 - Exhibit-2*
- 3. Death Certificate of Raja Singh. Exhibit-3*

4. Original annual statement of A/c for the Year 2003-04 of CSTC, Central provident Fund bearing the name of P.W.1.

Exhibit 4 (after objection)

5. Copy of circular issued by CSTC dated 1.4.04. *Exhibit-5*

6. True copy of letter dated 28.10.2007 Issued by Ld. Advocate of the plaintiffs along with two postal receipts.

Exhibit-6 (with objection)

7. Receipt of two copies of letter dated 28.10.2007 served upon concerned Office and by hand. *Exhibit - 7 (with objection).*

8. Letter dated 07.04.2008 issued by Sr. Audit Officer-II, Pension Cell of CSTC. - *Exhibit-8 (With objection).*

9. Receipt copy of letter dated 7.5.2008 Issued by Ld. Advocate for the plaintiff No.1 in favour of Managing Director A/C Officer, Administration personnel Officer & Depot Manager, Lake Depot CSTC. -*Exhibit -9 (with Obj.)*

10. Birth Certificate of Rakhee Singh by KMC. - *Exhibit -10 (with objection)*

11. Admit card of Madhyamik and H.S. Examination of Rakhee Sing *Exhibit-11*

12. Character Certificate dated 20.06.2008 of Rakhee Singh issued by Binodini Girls' High School. *Exhibit -12 (after Objection)*

13. Certified copy of application for Revocation of succession certificate & Original information slip. Exhibit-13 (after Objection).

On behalf of the defendants Manoj Kumar Singh adduced evidence and has exhibited the following documents:

- 1. Xerox copy of birth certificate of Rakhee Singh – Exhibit – A*
- 2. Ration Card of Bhagwan Singh Exhibit B (after Obj.)*
- 3. Original licence of conductor stands in name of Bhagwan Singh. Exhibit-C*
- 4. Identity card of Bagwan Sing issued By CSTC, Lake Depot. Exhibit-D*
- 5. Pass book of Bhagwan Sing of UBI, Lake Gardens Branch. Exhibit-E*
- 6. News paper publication dated 14.02.2007 in Hindu Daily Newspaper - Exhibit-F*
- 7. Mark Sheet of Rina Singh issued by Madhya Siksha Parisad, Uttar Pradesh. Exhibit-G*
- 8. Three Original voter Cards of defendants Exhibit H (Collectively)*
- 9. Passport of D.W.1 Exhibit - I.*
- 10. Admit Card of Bagwan Singh issued by Calcutta University. Exhibit-J*
- 11. Certificate of Madhyamik in the Name of D.W.1 issued by Madhyamik Siksha Parisad, U.P. Exhibit-K.*

12. Two certificate issued by Pradhan Of Muriary Gram Panchayat, U.P. -Exhibit -L (Series) With objection.
13. Pariwar Register issued by Khanda Vikash Adhikari, Balia U.P.- Exhibit -M (with Objection)
14. Two pay slips in the name of Bhagwan Singh and Raja Singh Respectively issued by CSTC. Exhibit - N (series).
15. Two certificates issued by Councillor, 89 Ward of KMC - Exhibit-O (Series).
16. Official seal and signatures of. CSTC Authority on receipt copy of D.W.1 to Depot Manager CSTC, Lake. Exhibit-P
17. Order for expunge dated 30.05.06 made By Lake Depot, Depot Manager Exhibit -Q
18. Seal and signature of concerned Authority of Charu Market Police Station on G.D. dated 25.02.2016 lodged by wife of Deceased Raja Singh. Exhibit-R.
19. L.T.I. of defendant No.2 and The seal of C.S.T.C. Authority on Letter dated 12.09.2007 issued by Shiv Dulari Singh to depot Manager, Lake Depot. Exhibit - S
20. LTI and seal on letter dated 03.08.2007 issued by Shib Dulari Singh to MD and Chairman of CSTC Lake Depot. Exhibit-T
21. Carbon copy of letter dated 4.12.2007 issued by Ld. Advocate of the Defendants to the DEPOT Manager, Lake Depot, CSTC- Exhibit-U

22. Copy of letter dated 11.03.2008 Written by Ld. Advocate for the defendant To the Law Officer, CSTC. Exhibit - V

23. Letter dated 01.08.2006 issued by Law Officer, CSTC, to Ld. Advocate of the Defendants. Exhibit – W

24. Letter dated 14.12.2007 written By Sr. Law Officer, CSTC to the mother of D.W.1. Exhibit-X

25. Succession Certificate issued by District Delegate at Alipore in Act 39 Case No.156 of 2006. Exhibit -Y (with Objection).

26.. Certified copy of various order in Connection with Act. No.39 case No, 156 of 2006 passed by Ld. Dist. Delegate Exhibit -Z (Obj.)

27. Certified copy Bailif report in case No. 156 of 2006- Exhibit - A-1 (after Objection)

28. Newspaper publication dated 14.2.07 In Hindu Daily Newspaper- Exhibit -B-1

29. letter for payment dues dated 15.04.2008 issued by Sr. Law Officer, CSTC to mother of D.W.1. - Exhibit - C-1 (after Objection)

30. Blank nomination form which was Lying with the file of the deceased Father of D.W.1 Exhibit - D-1 (after Objection).

Ultimately the Ld. Civil Judge (Junior Division) 2nd Additional Court at Alipore after perusal of the oral and documentary evidence has been pleased to dismiss the suit on contest on 30th August, 2016.

Before the Ld. First Appellate Court

Being aggrieved by and dissatisfied with the Judgment of the Ld. Trial Court passed in the aforementioned title suit the plaintiffs preferred a title appeal being Title Appeal No. 420 of 2016 which was ultimately disposed of by the Ld. 15th Additional District Judge at Alipore. In the said title appeal an application under Order XLI Rule 27 of the Code of Civil Procedure was also filed.

The Ld. First Appellate Court after taking into consideration the oral and documentary evidence on record and the submission of the Ld. Counsels representing the contending parties and also taking into the consideration the application filed under Order XLI Rule 27 of the said Code framed three points which are as follows:

- i)** whether the Ld. Trial Court is justified in its decision in dismissing the title suit filed by the plaintiffs, appellants herein on contest under the backdrop of this consideration that the plaintiffs appellants herein are not entitled to get any decree as prayed for since the main prayer of the plaintiffs/appellants to declare the plaintiff/appellant No.1 as a legally married wife of Raja Singh has not been properly proved in the suit ?
- ii)** Whether the impugned judgment and decree is to be confirmed ?
- iii)** Whether the impugned judgment and decree is sustainable in the eye of law ?

The Ld. First Appellate Court considering the documents produced on behalf of the appellants/plaintiffs and the respondents/defendants and taking into consideration oral evidence adduced on behalf of the contending parties and after considering the submission of the Ld. Counsels representing the appellants and the respondents and also taking into consideration the application filed under Order XLI Rule 27 of the Code of Civil Procedure filed on behalf of the appellants /plaintiffs has reached the following finding:

“Hence, it is,

Ordered

That the instant Appeal being Title Appeal No.420 of 2016, is allowed after allowing the application under order 41 rule 27 of the CPC filed by the plaintiffs/ Appellants against the Defendant/ Respondent No.1 ex-parte and Respondent Nos. 2 to 4 on contest. The impugned Judgment and Decree, dated 30.08.2016, passed by the Ld. Civil Judge (Jr. Divn) 2nd Additional Court, Alipore, 24 Parganas (South) in T.S. No.1560 of 2008 is hereby set aside.

It is made further clear that the Ld. Trial Court shall decide suit on remand by re-adjudicating the issue no.3, 5, 7 and 8 on the basis of evidence on record as already filed on behalf of both sides in the suit along with the documentary evidence as filed on behalf of the plaintiffs/Appellants along with the application under order 41 rule 27 of the C.P.C. The instant suit shall be re-admitted under the original file and number in the register of the Civil Suit in the Ld. Trial Court. The Trial on remand be completed within six months from the date of communication of this order.

It is also made clear that the evidence as recorded earlier in the Trial of the suit and the material documents, as sought to be produced before this Court of Appeal as Additional evidence under the provision of Order 41 rule 27 of the CPC after being admitted, be also the part of the evidence in the trial on remand.”

Thereby allowing the title appeal after allowing the application under Order XLI Rule 27 of the Code of Civil Procedure and setting aside the judgment passed in Title Suit No. 1560 of 2008. The Ld. First Appellate Court has remanded the suit directing the Ld. Trial Court to readjudicate the issues No. 3, 5 , 7 and 8 on the basis of evidence on record along with the documentary evidence as filed on behalf of the appellants /plaintiffs along with the application under Order XLI Rule 27 of the said Code. This being the impugned order. The appellants have preferred the present appeal challenging the same.

3. Mr. Dyutiman Banerjee being assisted by Mr. Amartya Basu the learned Counsels representing the appellants during his submission has stated the following:

- i)** The Trial Court has minutely gone into both oral and documentary evidence and after considering verbal evidence and the documents has been pleased to adjudicate the suit.
- ii)** He has further submitted that there being no marriage certificate produced on behalf of the plaintiff the Ld. Trial Judge has not been pleased to accept the contention of the appellant.

- iii)** He has further submitted that marriage between Raja Singh alias Bhagawan Singh since deceased and Shiv Dulari took place long ago in the year 1975.
- iv)** He has further submitted that Raja Singh never ever married Dolly Singh as such there cannot be existence of any daughter.
- v)** He has further submitted that Dolly Singh and Rakhee Singh are fraudulently claiming themselves to be the wife and daughter of the said Raja Singh since deceased
- vi)** He has further submitted that the title suit filed by Dolly Singh and Rakhee Singh do not have any legs to stand upon as because Calcutta State Transport Corporation has been made a party being defendant No. 1 but no notice under Section 80 of the Civil Procedure Code has been served upon the said transport corporation prior to the institution of the title suit.
- vii)** He has further submitted that the impugned judgment passed by the Ld. First Appellate Court has not critically examined the evidence on record both oral and documentary while passing the impugned judgment.
- viii)** He has further submitted that the lis instituted by Dolly Singh and Rakhee Singh is nothing but a case inflicted upon the appellants/defendants harassing them.
- ix)** He has also submitted that the order of remand directing further trial of the suit is not required as the documents intended to be brought on record will not alter the fate of the litigation.

- x)** The Ld. Counsel has relied upon the judgment cited at 2024 SCC Online Guj 3987.

Banking upon the aforesaid facts and circumstances the said counsel has prayed for allowing the present appeal thereby setting aside the order of remand.

- 4.** Mrs. Sohini Chakrabarty being assisted by Ms. Prajaaini Das, the learned Counsels representing the respondents during her submission has stated the following

- i)** The respondents plaintiffs have filed an application under Order XLI Rule 27 of the Code of Civil Procedure and through the said application some documents have been relied upon to be brought on record.
- ii)** She has further submitted that for the purpose of bringing the new documents on record further trial is required and for that the order of remand is the correct step taken by the Ld. First Appellate Court.
- iii)** She has further submitted that the respondent wife/plaintiff has sought to bring on record the documents which are to be taken into consideration to come to the just conclusion of the lis for which further trial is required and the Ld. First Appellate Court has correctly remanded the matter.
- iv)** The Ld. Counsel has relied upon the judgment reported at (2004) 4 SCC 26.

Relying on the aforementioned facts the learned counsel has sought for dismissal of the present appeal and thereby affirming the impugned judgment.

5. From the submission of the learned counsels and on perusal of the impugned judgment and the judgment passed by the Ld. Trial Court, the fact which lies upon this Court is to assess as to whether the order of remand passed by the Ld. First Appellate Court is in accordance with law or not.
6. Along with the first appeal the appellants/plaintiffs have filed an application under Order XLI Rule 27 of the code of Civil Procedure thereby seeking to produce additional evidence through several documents which are as follows:

“1. Original transfer certificate of Raja Singh son of Dhari Chand Singh dated 16.01.1981 issued by Jadavpur Hindi Vidyapit.

2. Original letter of intimation dated 24.02.2005 to Raja Singh issued by Binodini Girls' High School.

3. Original Ration Card of Raja Singh issued by the Government of West Bengal.

4. Original mark sheet for the year 2001 to 2002 of Rakhi Singh.

5. Original mark sheet for the year 2003 to 2004 of Rakhi Singh.

6. Original application of health insurance of Raja Singh before the A.P.O Maniktala depot CSTC.

7. Original birth certificate of Rakhee Singha (Singh) issued by Kolkata Municipal Corporation Health Department.

8. Original Death certificate of Raja Singh issued by Kolkata Municipal Corporation Health Department.

9. Statement of account in the name of Raja Singh for the year 2002 to 2003.

10. Original allowance statement of Raja Singh for the month of February, 2006.

11. Original right to information letter dated 19.05.2017.

12. Four original photographs of Raja Singh on his marriage and his family.

13. Original envelope along with caveat notice.”

7. From the list it transpires that the issue involved is as to who is the legally married wife of the deceased Raja Singh alias Bhagawan Singh. Whether it is Dolly Singh or Shiv Dulari Singh. This determination will set forth the right of the persons to the terminal benefits. It is a fact that both Dolly Singh and Shiv Dulari Singh have claimed themselves to be the wife of Raja Singh and thereby seeking the amount lying in the provident fund, gratuity and pension in respect of Raja Singh.

8. Through the application under Order XLI Rule 27 of the Code of Civil Procedure the respondents/plaintiffs have sought for adducing documents which relate to the transfer of Raja Singh issued by Jadavpur Hindu Vidyapith dated 16.01.1981 and extends to document relating to the year 2017.

9. There being no married certificate produced on behalf of either of the contending parties, Court has to reach to the just conclusion considering the other circumstantial evidence among which, what can be better than documentary evidence. These documents which have been stated to be brought on record and are not yet in the record are

to be proved, for which oral evidence is required and the opposite party is required to be given opportunity to cross-examine on those documents to prove or to disprove the authenticity, veracity of those documents. Such number of documents can only be taken into consideration after taking evidence on record, so opportunity of adducing further evidence is required to be given for which further trial is required.

The issues framed by the Ld. Trial Court are to be dealt with elaborately after taking into consideration the new documents, which have been sought to be produced, after taking oral evidence.

- 10.** The judgment cited on behalf of the appellants which has been reported in 2024 SCC OnLine Guj 3987 has been passed in relation to a petition under Article 227 of the Constitution of India. In the said case the matter involved was handing over of vacant and peaceful possession of land wherein the documents which were sought to be produced as additional documents were resolution passed by the Board of Directors of a company and copy of an order passed by the City Deputy Collector Ahmedabad, West. The Ld. Judge in the said case has rejected the application on the ground that the Court is of the considered view that on the evidence which has been adduced on record, it is in a position to pronounce the judgment. So in the said case referred to by the appellants the judge felt that sufficient evidence was there to pronounce the judgment, which is not the case in our hand. In the present lis to reach the just conclusion, Court has

to take into consideration the documents which the respondents/plaintiffs intend to bring on record. Thus, in the present case the documents which have been intended to be brought through the application under Order XLI Rule 27 of the Code of Civil Procedure will be of help to the Court to come to the correct conclusion and to pronounce the judgment. So the judgment cited on behalf of the appellants do not help the cause of the appellants.

11. So this Court is also of the same view as that of the Ld. First Appellate Court.

12. The appeal being **F.M.A.T. 1224 of 2017** stands thus **dismissed** accordingly **CAN 1 of 2017** stands **disposed of**.

13. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

14. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)