OD-4

APO/61/2026
In CS/163/1977
IA No.GA/1/2026

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

GAUTAM MALLICK

-VERSUS-

BALARAM MALLICK AND ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
-AND-
The Hon'ble JUSTICE AJAY KUMAR GUPTA

Date: 13th November, 2026.

Appearance:
Mr. Arindam Banerjee, Sr. Adv.
Mr. Prashant Kumar Singh, Adv.
...for the appellant.

Mr. Siddhartha Banerjee, Adv.
Mr. Rahul Karmakar, Adv.
Mr Arunesh Pathak, Adv.
Mr. Sauradipta Banerjee, Adv.
...for the intervenor/purchaser.

Mr. Arif Ali, Adv.
Mr. Varun Kothari, Adv.
Mr. B. N. Joshi, Adv.
Ms. Shatabdi Kundu, Adv.
...for the noticee nos.10 & 11.

The Court :- The appeal is directed against the order dated July 22, 2026.

Appeal is at the behest of a person claiming himself to be the nephew of the plaintiff no.3.

By the impugned order, the learned Single Judge dismissed the application of the appellant, by which the appellant sought setting aside the abatement of the suit as also substitution of the deceased parties to the suit.

Learned Senior Advocate appearing for the appellant submits that, the suit was in respect of a trust property. He refers to the pleadings in the plaint. He submits that, the right to sue survived the death of the plaintiff no.3 through whom the appellant is claiming substitution and setting aside of the abatement.

Learned Senior Advocate appearing for the appellant refers to various provisions of Order XXII of the Code of Civil Procedure, 1908. He submits that, the appellant is entitled to setting aside of abatement of the suit notwithstanding the plaintiff no.3 not taking any steps for substitution of the deceased parties. He submits that, in the event the application of the appellant is not allowed, the issues raised in the suit will stand foreclosed so far as the appellant is concerned.

Learned Advocate appearing for the respondent submits that, the respondent purchased an immovable property involved in the suit on August 3, 2011 by a registered deed of conveyance. He submits that, the suit abated on expiry of 90 days from February 11, 1989 when the sole defendant expired. He points out that, the uncle of the appellant i.e., the plaintiff no.3 expired on September 17, 2021. During the lifetime of the plaintiff no.3, the immovable property was purchased by a registered deed of conveyance. The plaintiff no.3 did not take any steps either for substitution or for setting aside of abatement.

The appellant cannot claim a better or higher right than that of the plaintiff no.3.

Learned Advocate appearing for the respondent points out that, there were four plaintiffs to the suit with the plaintiff no.1 expiring on August 26, 2008, plaintiff no.2 expiring on June 27, 1982, plaintiff no.3 expiring on September 17, 2021 and the plaintiff no.4 expiring on June 22, 2007. He points out that, the defendant no.2 expired on September 26, 1979 and, in any event, the defendant no.2 was expunged as a defendant by an order of Court. The sole defendant i.e., the defendant no.1 expired on February 11, 1989.

We find from the records that four persons as plaintiffs filed a suit for declaration and injunction being CS/163/1977. There were two defendants in the suit.

We find from the records that the plaintiff no.1 expired on August 26, 2008; plaintiff no.2 expired on June 27, 1982; plaintiff no.3 expired on September 17, 2021 and the plaintiff no.4 expired on June 22, 2007. By an order dated March 25, 1980 the name of the defendant no.2 was expunged from the records. The defendant no.1 expired on February 11, 1989.

Records placed before us establish that no application for substitution or setting aside of the abatement was filed prior to the application made by the appellant in which the impugned order was passed.

Prior to the application for substitution and setting aside of abatement in which the impugned order was passed, the suit filed by the plaintiffs stood abated as against the defendant no.1 on expiry of 90 days from February 11, 1989. At that material point of time, the plaintiff no.3 through

whom the appellant claims a right to sue survive, was alive. The plaintiff no.3 expired on September 17, 2021. Between April 1989 till the date of his death on September 17, 2021 the plaintiff no.3 took no steps for substituting the defendant no.1 or setting aside the abatement of the suit so far as the defendant no.1 is concerned. He took no steps with regard to substituting the other deceased plaintiffs also. The three other plaintiffs pre deceased the plaintiff No. 3. In fact, with the expunging of the defendant no.2, the suit was limited to only one defendant i.e. the defendant no.1 who expired on February 11, 1989.

The application made at the behest of the appellant does not specify any ground as to why the plaintiff no.3 through whom the appellant was claiming right to sue surviving took no steps for the purpose of substitution or setting aside of abatement consequent upon the death of the defendant no.1 on February 11, 1989. It also does not explain the non action in relation to the three pre deceased plaintiffs also.

The appellant cannot claim a right higher or better than that of the plaintiff no.3 assuming that the appellant is entitled to represent the plaintiff no.3 in the suit. There is no explanation why the plaintiff no.3 did not take any steps for setting aside of abatement or substitution as noted above.

Between the period of the suit being abated consequent upon the death of the sole defendant on February 11, 1989, till the date of the death of the defendant no.3, an immovable property which was the subject-matter of the suit was sold by a registered deed of conveyance on August 3, 2011. The

registered deed of conveyance came about during the life-time of the plaintiff no.3 who took no steps with regard thereto.

Learned Single Judge proceeded on the basis of the delay as also on the basis of the fact that, the suit was not one relating to a trust.

We find no ground to interfere with the order impugned.

APO/61/2026 along with the connected application is dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

(AJAY KUMAR GUPTA, J.)

A/s.