
(2026) 08 CAL CK 2982
In the Calcutta High Court, Appellate Side
Case No : FMAT 277 of 2026

George Clayton Dixon

APPELLANT

Vs

Jayesh Karia & Anr.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Code of Civil Procedure — Order XXI Rule 97, Section 105, XXI Rules 97 to 101
Indian Evidence Act — Sections 107 and 108, 108
Bharatiya Sakshya Adhiniyam — Sections 110 and 111, 111
Hindu Adoption and Maintenance Act, 1956

Citation : (2026) 08 CAL CK 2982

Hon'ble Judges : Sabyasachi Bhattacharyya, J.; Supratim Bhattacharya, J.

Bench : Division Bench

Advocate : Mr. Rohit Das, Mr. Indradip Das, Mr. Preetam Majumdar, Mr. Probal Kr. Mukherjee, Snr. Adv., Mr. Supriyo Chattopadhyay, Mr. Sudip Kr. Maiti, Ms. Debosri Chatterjee

Final Decision : Dismissed

Judgement

1. The present appeal has been preferred against an order whereby an application under Order XXI Rule 97 of the Code of Civil Procedure, for police help to evict the judgment debtor in an eviction suit, namely one A.C. Vasu, was allowed.
2. The memorandum of appeal is accompanied by a condonation application and, more importantly, an application for leave to prefer the appeal.
3. The application for leave has been filed, as has been the appeal, by a person claiming to be the constituted attorney of the judgment debtor. Learned counsel appearing for the appellant/leave applicant submits that the eviction decree was passed against the said A.C. Vasu in the year 1982 and execution was levied in 1983. It is argued that in 1997, a fresh tenancy was created in favour of the said A.C. Vasu. A.C. Vasu, in the year 1996, it is alleged, executed a registered general power of attorney in favour of the appellant/leave applicant. That apart,

a registered adoption deed was also executed, whereby the said A.C. Vasu (judgment debtor) formally adopted the present appellant.

4. Subsequently, a Will was also executed in favour of the present appellant by the said A.C. Vasu.

5. Learned counsel appearing for the appellant submits that in an interlocutory order passed in connection with the miscellaneous case arising out of the Order XXI Rule 97 application, being Order No.27 dated January 17, 2026, the executing Court observed, *inter alia*, that if alive, the said A.C. Vasu would be now more than 100 years of age and it is still not clear as to whether he is alive. On such premise, and on the basis of the submission of the learned Advocate representing the judgment debtor that he had no contact with the judgment debtor A.C. Vasu directly, it was held by the executing court that the power of attorney executed by him in favour of the present appellant was of no significance and was not valid.

6. Learned counsel submits that since the said order has merged in the final order passed in Order XXI Rule 97 application, which is impugned in the present appeal, borrowing the principle of Section 105 of the Code of Civil Procedure, the present challenge also incorporates a challenge to the legality of such interlocutory order, whereby the power of attorney was held to be invalid.

7. Learned counsel submits that within the contemplation of Sections 107 and 108 of the Indian Evidence Act [now Sections 110 and 111 respectively of the Bharatiya Sakshya Adhiniyam (BSA)], the onus lay on the party who asserted the death of A.C. Vasu, that is, the respondent/deed holder, to establish the fact of his death. Without entering into such factual enquiry, the order dated January 17, 2026 invalidating the power of attorney of the appellant was illegal.

8. That apart, it is submitted that the appellant was constrained to file the present appeal himself with an application for leave to prefer the same, in view of the executing court having invalidated his power of attorney. Thus, in the teeth of the said order dated January 17, 2026 passed by the executing court, the appellant does not have the *locus standi* to represent the judgment debtor otherwise than in his independent capacity.

9. Although the said order is assailed, it is submitted that until the same is set aside, the appellant has no option but to prefer the appeal with a prayer for grant of leave to prefer the same in his own name.

10. Furthermore, learned counsel for the appellant argues that the impugned order could not survive in any event, since the executing court proceeded on the very premise that the original judgment debtor A.C. Vasu was no longer alive, as recorded in the order dated January 17, 2026, on which basis the power of attorney executed by him in favour of the present appellant was invalidated. If that be so, it is argued that all further orders, including the order impugned herein, were passed in the name of a deceased person. By placing reliance on

Shanti Devi vs. Khandubala Dasi & Ors., reported at AIR 1961 Cal 336, rendered by a Full Bench of this Court, learned counsel submits that unless the heirs and legal representatives of the judgment debtor, in whom the estate of the judgment debtor vests, are impleaded in the execution case, no order can be passed in such execution proceeding in the name of a dead person.

11. Thus, the impugned order, in any event, was a nullity in the eye of law and ought to be set aside.

12. Learned senior counsel appearing for the respondents/judgment debtors submits that the alleged irregularity/illegality of the order dated January 17, 2026, sought to be urged by the appellant before this Court, has not been set up as a ground in the memorandum of the present appeal, thereby precluding Section 105 of the Code of Civil Procedure from being attracted. In any event, learned senior counsel submits that the appellant has failed to prove before any forum that the original judgment debtor A.C. Vasu is still alive.

13. It is contended that under the provisions of the Code of Civil Procedure, the court has ample power, if it so opines, in order to ascertain whether A.C. Vasu is still alive, to direct his personal presence in Court.

14. Thus, seen from any perspective whatsoever, the appellant does not have the *locus standi* to prefer the appeal in his independent capacity.

15. It is contended that all along, the appellant was representing A.C. Vasu as his constituted attorney in the executing court. Thus, it is only the said A.C. Vasu who could have preferred the appeal, if he was alive, represented at best by his constituted attorney. However, the constituted attorney, on the demise of the principal, cannot have any independent *locus standi* to prefer any appeal.

16. Learned senior counsel further points out that if the appellant was to assert any right independent of the judgment debtor, it was for him to take out an appropriate application under the provisions of Order XXI Rules 97 to 101 of the Code of Civil Procedure, which has not been done in the present case.

17. With regard to the alleged adoption deed executed by the judgment debtor A.C. Vasu, thereby adopting the appellant, it is submitted by learned senior counsel for the respondents that the said deed, even if there be any, is invalid in the eye of law. An adoption deed executed allegedly under the Hindu Adoption and Maintenance Act, 1956, it is submitted, can only be valid in case both the adoptive father and the adopted child are Hindus by faith. The present appellant is admittedly Christian by faith whereas the alleged adoptive father A.C. Vasu was a Hindu and, as such, there could not be any valid adoption by one of the other.

18. Insofar as the purported Will is concerned, since the appellant asserts that the judgment debtor is still alive, there could not arise any question of relying on the Will. Even otherwise, learned senior counsel submits that there cannot be any unilateral transfer by the tenant of a tenanted property, either *inter vivos* or

posthumous, without the consent of the landlord.

19. Thus, bequest of a tenanted property by way of a Will is not tenable in the eye of law.

20. Hence, the appellant, it is argued, does not have any *locus standi* to take out the present appeal or seek leave to file the same.

21. Upon hearing learned counsel for the parties, this Court formally puts a query to the learned Advocate for the appellant as to whether the appellant is in a position to disclose the current address or the whereabouts of the judgment debtor A.C. Vasu. Upon such query, learned counsel for the appellant, on instruction, candidly submits that the appellant does not have any idea about the whereabouts or the present residence of the judgment debtor. Thus, it is clear that the appellant is also not in a position to establish that the judgment debtor is still alive.

22. Even otherwise, if we construe the presumption under Section 108 of the Indian Evidence Act and/or the corresponding provision in the BSA (Section 111), we do not find that the judgment debtor A.C. Vasu has appeared at any point of time before the executing Court at least for the last seven years. Hence, primarily it is for the appellant to establish, since he asserts that A.C. Vasu is alive, the said factum.

23. Since the appellant admittedly does not know the whereabouts of the said judgment debtor and/or does not have any instruction from the said judgment debtor, we cannot give a premium to the assertion that the said A.C. Vasu, who would be more than a century old if alive now, is still alive.

24. Thus, seen from such perspective, on the demise of A.C. Vasu, the power of attorney has automatically ceased to operate.

25. Even if we were to presume that A.C. Vasu is still alive, it is only him who would have the *locus standi* to prefer the present appeal, being directly aggrieved by the impugned order.

26. However, the present appeal has not been filed by A.C. Vasu, represented by his constituted attorney, but directly by such alleged constituted attorney, the present appellant, in his individual name and capacity.

27. Having not claimed any independent third party rights at any point of time before any forum but all along having claimed as the power of attorney of the judgment debtor, in the capacity of his agent, the appellant cannot now seek an independent right to prefer an appeal as an "aggrieved party" vis-à-vis the impugned order.

28. Thus, the leave as sought cannot be granted.

29. Although the leave, if granted, would be the window for the Court to look into the illegality, if any, in the impugned order, yet, in order to satisfy our judicial

conscience, we record the fact that we might still have taken a different view in the event any of the heirs and legal representatives of A.C. Vasu had come before us claiming leave to prefer the appeal by being candid and admitting that the said A.C. Vasu is no longer in the world of the living. It is only such heirs and legal representatives who might have the right to urge that the further proceeding in the execution case and the impugned order were nullities for lack of impleadment of such heirs and legal representatives. However, no such heirs/legal representatives, if any, have ever come forward, either before the executing court or before this court, to take up the cudgel on behalf of the deceased A.C. Vasu, if he is no longer alive.

30. Hence, in the absence of any proof as to A.C. Vasu even having left behind any heirs and legal representatives, we cannot permit the appellant, who was merely the constituted attorney of the judgment debtor during A.C. Vasu's lifetime, whose power ceased with the apparent demise of the judgment debtor, to agitate such point before us.

31. As such, we are not inclined to grant leave to the appellant to prefer the appeal.

32. Accordingly, CAN 3 of 2026 is dismissed on contest, thereby refusing to grant leave to the appellant to prefer FMAT 277 of 2026.

33. Consequentially, FMAT 277 of 2026, as well as CAN 1 of 2026, CAN 2 of 2026, and CAN 4 of 2026 are dismissed.

34. There will be no order as to costs.

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