

(2011) 08 CAL CK 0179
In the Calcutta High Court
Case No : C.O. No. 3015 of 2010

Smt. Minati Ghosh and Another	Vs	APPELLANT
Sri Kankali Charan Chattopadhyay		RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Evidence Act, 1872 — Section 65

Citation : (2011) 08 CAL CK 0179

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Tapas Kr. Bhattacharyya and Kaushikee Banerjee, for the Appellant; Tapan Kr. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This revisional application is directed against the Order No. 123 dated July 14, 2010 passed by the learned Civil Judge (Junior Division), 1st Court, Bolpur in Misc. Case No. 4 of 2004 arising out of Title Execution Case No. 3 of 2003.

2. The Petitioners are the judgment debtors in the instant execution case. They filed an application u/s 47 of the CPC praying for dismissal of the execution case on the ground that the decree from which the execution case has arisen was passed against a dead person and as such, the decree is a nullity.

3. That application was rejected by the impugned order. Being aggrieved, this application has been preferred.

4. Now, the point for consideration is whether the learned Executing Court was justified in rejecting the prayer for dismissal of the execution case.

5. Upon hearing the learned Counsel for the parties and on going through the materials on record, I am of the view that the learned Executing Court has rightly rejected the prayer for dismissal of the execution case. The opposite party

of the revisional case is the decree-holder and he filed the execution case being Execution Case No. 3 of 2003 against the Petitioners. The Petitioners have contended that their predecessor-in-interest, namely, Sadhan Ghosh died on September 13, 2002 while the decree in the Title Suit No. 60 of 1992 was passed after his death, that is, on October 1, 2002. So, the decree is a nullity and for that reason, the execution case is not maintainable. In support of the contention, the Petitioners have produced a xerox copy of the death report of Sadhan Ghosh obtained from the concerned Municipality.

6. On perusal of the xerox copy of the said death certificate appearing as Annexure "C" to the application, it appears that the said death certificate was obtained on March 22, 2005 while the death occurred on September 13, 2002. Therefore, the original death certificate obtained in March 2005 is not of much old, but can be described as a recent one. The Petitioners have failed to produce the said death certificate in original before the Executing Court and they have stated the reasons that the original death certificate had been lost. This ground that a recently obtained original death certificate which is necessary for various purposes for which it had been obtained, had been lost from the custody of Petitioners, I hold, is not believable at all.

7. Mr. Tapas Kr. Bhattacharyya, learned Advocate appearing on behalf of the Petitioners submits that the xerox copy of the same is admissible as per decision of Ratan Das v. Goutam Das reported in 2010(1) CLJ (Cal) 902 and thus, he submits that xerox copy is admissible. With due respect to Mr. Bhattacharyya, I am of the view that this decision is not applicable in the instant case. In that decision, the original paper, that is, the tenancy agreement was lying with the landlord who filed the suit for eviction and who was not unheard for a long time and so, the xerox copy was marked as exhibit. In that case, the original was lying with the custody of the opposite party, but in the instant case, it is not the situation. The reasons assigned by the Petitioners that the original certificate is missing, I am of the view, is not believable at all. The learned Executing Court has rightly rejected the prayer for marking the said document as exhibit and marked it "X" for identification for want of the original. I hold that the learned Trial Judge has rightly marked the said xerox copy as "X" for identification in absence of the original.

8. Under the circumstances, the date of death of the original Defendant as narrated on September 13, 2002 as claimed by the Petitioners cannot be accepted and it could not be held that Late Sadhan Ghosh died on September 13, 2002. Therefore, the learned Trial Judge has rightly rejected the prayer for marking the said document as exhibit as per provision of Section 65(a) of the Indian Evidence Act.

9. I am of the view that this application is devoid of merits and there is no scope of interference. Accordingly, the revisional application fails to succeed.

10. It is, therefore, dismissed.

11. Considering the circumstances, there will be no order as to costs.
12. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.