

(2016) 03 CAL CK 0139
In the Calcutta High Court
Case No : C.O. No. 1678 of 2015

Sri Atul Chandra Ghorai

APPELLANT

Vs

Sudhir Chandra Chakraborty

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1

Citation : (2016) 5 WBLR 250

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Mr. Bhaskar Ghosh, Senior Advocate, Mr. Uttam Kr. Bhattacharya and Mr. Kaustav Mishra, Advocates, for the Petitioner; Mr. Subir Sanyal and Mr. Om Narayan Rai, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Siddhartha Chattopadhyay, J.—;Challenge in the present revisional application is to the Order dated 07.03.2015 passed in T.S. No. 50 of 1985 by the learned Civil Judge (Junior Division), 3rd Court at Paschim Medinipur rejecting the application dated 06.02.2013 filed by the defendants praying for abatement of the suit on the death of the plaintiff/opposite party Nos. 2, 3, 12, 24, 25, and 29 and the defendant/petitioner No. 2.

2. According to the petitioner, learned Court below failed to appreciate that the plaint was filed in the capacity of an individual and not in the capacity of sebaite. The petitioner further contended that it is not a suit filed in the capacity of a legal representative of the deity rather in the personal capacity of the so called sebaite. It is further their contention that this Court has directed the Court below, after being prima facie satisfied, to decide if the suit has been abated either wholly or partly.

3. At the time of hearing learned Counsel appearing on behalf of the opposite party submits that the suit has been filed not in individual capacity rather it was

a suit under the style of representative capacity. Learned Counsel appearing on behalf of the opposite party further contended that when a suit has been filed under a representative capacity the suit would not abate due to death of some of the plaintiffs or defendants. He also contended that the impugned order does not warrant any interference.

4. On perusal of the impugned order, I find that the learned Court below has discussed the relevant provisions of under Order 22 namely Order 22, Rule 2 to Order 25, Rule 5 .

5. It appears from the plaint itself that the defendants are contesting the suit on behalf of the Hindus of Jalchak Mouza under Police Station Pingla. Order 22, Rule 1 speaks "the death of plaintiff or defendant shall not cause the suit to abate if the right to sue survives". It is well settled principles of law that a suit by a deity does not abate on the death of one of the sebaits. Here the plaint itself speaks that the suit has been filed by the sebaits on behalf of Sree Sree Tileswar Jew Shib Thakur. The relief claimed in the plaint also speaks that deity is a family deity and the plaintiffs are the sebaits of Sree Sree Thakur Jew. So the decree has been prayed for on behalf of the deity itself and not in their personal capacities.

6. It is to be remembered that procedural laws are meant for regulating to do substantial and real justice and not to foreclose a substantial rights of a citizen. Procedural law has been viewed as the handmaid of justice and not supposed to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of Code of Civil Procedure, as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit others similarly placed as long as their distinct and independent right to claim remain intact and nor lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must be viewed as a flexible tool of conveyance in the administration of justice. Therefore, the Hon''ble Apex Court in a decision reported in AIR 2003 Supreme Court Cases 2588, (Amarjit Singh Kalra v. Promod Gupta) has given a guideline to adopt a positive and constructive approach than merely scuttle the whole process to foreclose and to adjudication on the claims of others on merits.

7. Considering the direction of the Hon''ble Apex Court I am of the view that the provisions of Order 22, Rule 1 are not penal in nature. It is the rule of procedure and it was intended to facilitate the procedural law and not for taking away the substantial right of the parties. Court should not take a pedantic approach by observing strict adherence to the procedural aspect of law.

8. Having regard to the facts and circumstances of the case and the legal intricacies, I am of the view that the impugned order does not warrant any

interference. I am not oblivion to the fact that the suit is pending since 1985 and it is at the stage of cross-examination of defence witnesses. Therefore, learned Court below is hereby directed to proceed with the case as expeditiously as possible and dispose of the suit within three months from the date of communication of this order.

9. In the result, the revisional application stands dismissed but without cost.

10. Let a copy of this order be sent to the learned Court below for his information and taking necessary action in accordance with law.

11. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.