
(2010) 12 CAL CK 0012

Calcutta High Court

Case No: C.O. No. 2966 of 2010

Jaladhar Ghosh

APPELLANT

Vs

Shasadhar Ghosh and
Others

RESPONDENT

Date of Decision: Dec. 21, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2A
- Evidence Act, 1872 - Section 65

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Sanjib Ghosh, for the Appellant; Kuldip Mullick, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Plaintiff/Petitioner and is directed against the order No. 247 dated June 29, 2010 passed by the learned Civil Judge (Junior Division), Additional Court, Ghatal in Judicial Misc. Case No. 1 of 2004 thereby rejecting an application for making a document as exhibit. The said Judicial Misc. Case has arisen out of the Title Suit No. 14 of 2004.

2. The case in short is that the Petitioner and the opposite party No. 9 filed a suit being the Title Suit No. 14 of 2004 (previously Title Suit No. 28 of 2001) for declaration and permanent injunction in respect of the property as mentioned in the schedule to the plaint. At the time of filing the suit, the Plaintiffs moved an application for injunction with regard to "ka" schedule property and the learned Trial Judge passed an order of status quo ante by an order dated March 11, 2002. But such order of status quo was not maintained by the opposite party No. 1 and for that reason the Petitioner filed an application under Order 39 Rule 2A of the CPC and that application has been numbered as Judicial Misc. Case No. 24 of 2003. Subsequently, the Judicial Misc. Case has been renumbered as 1 of 2004. In that misc. case, the Petitioner wanted to prove a letter dated November 6, 2001

written by Jaladhar Ghosh and Ashok Kumar Ghosh to the S.D.L. & L.R.O., Ghatal, District Midnapore. That letter was not produced by the State / opposite party. In the circumstances, the Petitioner wanted to adduce secondary evidence which was refused by the learned Trial Judge. Being aggrieved, this application has preferred.

3. Now the question is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on perusal of the materials on record, I find that the short question involved in this application is whether the Petitioner could be permitted to adduce secondary evidence when it is alleged that the letter is lying with the State/opposite party. It is the specific case of the Petitioner that Jaladhar Ghosh and Ashok Kumar Ghosh wrote a letter dated November 6, 2001 to the S.D.L. & L.R.O., Ghatal and the said letter was duly received by the office of the S.D.L. & L.R.O., Ghatal, Midnapore by affixing seal and signature on the copy of the letter. The Petitioner called for certain documents from the office of the S.D.L. & L.R.O., Ghatal and all letters except the letter dated November 6, 2001 written by Jaladhar Ghosh and Ashok Kumar Ghosh jointly were produced. So far as non-production of that letter is concerned, it is stated on behalf of the State that such letter dated November 6, 2001 had not been received by the concerned office at all. So, it is not possible for production of that letter by the State/opposite party. The State/opposite party has produced a letter from the concerned office to the effect that no such letter was received by the concerned S.D.L. & L.R.O. It is easy to say that no such letter was received as per Receipt Register of the concerned office. But the copy of the letter dated November 6, 2001 written by Jaladhar Ghosh and Ashok Kumar Ghosh jointly has been produced and it bears the official seal and remarks of receipt with signature and date thereon. That letter is alleged to have been sent in 2001 whereas the suit was filed on April 16, 2001; though the letter was sent after filing of the suit, yet, upon perusal of the seal and the endorsement of receipt with signature and date, I am of the view that statement of the Petitioner should be accepted relating to sending of the said letter to the concerned S.D.L. & L.R.O., Ghatal. There is no whisper that seal and signature appearing on the copy of the letter, on behalf of the S.D.L. & L.R.O. are not genuine.

5. This being the position, for the purpose of disposal of this application, it is apparent that the said letter had been received by the office of the concerned S.D.L. & L.R.O. but the same was not produced by the State / opposite party at the time of hearing. This being the position, the Petitioner is permitted to adduce secondary evidence u/s 65(a) of the Indian Evidence Act. Therefore, the impugned order cannot be sustained. It is hereby set aside. The Plaintiff/Petitioner is permitted to adduce secondary evidence to prove the letter dated November 6, 2001 of Jaladhar Ghosh and Ashok Kumar Ghosh.

6. This application is disposed of in the manner indicated above.

7. Considering the circumstances, there will be no order as to costs.

8. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.