

CIVIL REVISION

Present: The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 26.08.2010

C.O. No.2256 of 2006

Uttam Kumar Saha.

Versus

Mukti Saha

Points:

**Scope of Revision** - No appeal preferred against final order-Revision against interlocutory order whether can be entertained -Code of Civil Procedure, 1908 S.115

Facts:

The opposite party filed a suit for declaration of title over the suit property and for recovery of possession thereof against her uncle. Suit was decreed exparty. Her uncle filed application under order 9 Rule 13 C.P.C. During the pendency of the said proceeding her under died. Petitioner filed an application for substitution claiming as adopted son of the defendant. Trial Court rejected the application. Petitioner preferred revision against the said order. Revisional application being dismissed the petitioner preferred the present application.

Held:

Since the application under Order 9 Rule 13 of the C.P.C. has been dismissed finally and no appeal has been preferred against the order of dismissal of the application under Order 9 Rule 13 of the C.P.C., I am of the view that the present application for substitution has become infructuous.

Para 9

For the Petitioner : Mr. Saptansu Basu, Mrs. Ananya Das.

For the Opposite party: Mr. Satyajit Talukdar.

**Prasenjit Mandal, J.:** This application is directed against the judgment and order dated May 22, 2006 passed by the learned Additional District Judge, First Court, Siliguri in Civil Revision No.2 of 2005 thereby affirming the order no.148 dated March 14, 2005 passed in Misc. Case No.49 of 1991 arising out of the Title Suit No.65 of 1985.

2. The short fact is that the plaintiff/opposite party filed a suit for declaration of title over the suit property and for recovery of possession thereof against her uncle, Narayan Ch. Saha (since deceased) and others before the learned Assistant District Judge, Siliguri in the year 1985. In that suit, the defendants contested by filing the written statement denying the material allegations made in the plaint and they have specifically stated that the deed of gift executed in favour of the plaintiff was cancelled by executing a deed of revocation and accordingly, they prayed for dismissal of the suit. At the time of hearing of the suit, the petitioner became ill and as a result the suit was decreed ex parte on April 27, 1991. Thereafter, the petitioner preferred an application under Order 9 Rule 13 of the C.P.C. for setting aside the decree. While the father of the petitioner was proceeding with that misc. case under Order 9 Rule 13 of the C.P.C., he died on November 6, 1993. Thereafter, the petitioner filed an application for substitution on the ground that he is the adopted son of late Narayan Ch. Saha and so he be substituted in place of the deceased petitioner. That application was rejected by the order dated March 14, 2005. Against such order of rejection, the petitioner filed a civil revision no.2 of 2005 which was

also rejected on contest by the order impugned. Being aggrieved, this application has been preferred.

3. Upon hearing the learned Advocate of both the sides and on perusal of the materials on record, I find that the application under Order 22 Rule 3 of the C.P.C. filed by the petitioner was treated as a Misc. Case No.49 of 1991. In that misc. case, strong objection was raised by the plaintiff stating, inter alia, that the petitioner is not at all an adopted son of late Narayan Ch. Saha. In fact, the heirs of Late Narayan Ch. Saha have not been included in the application for substitution. The names of the heirs have been stated in the objection filed by the plaintiff. The deed of adoption is false and so it should not be considered.

4. Upon consideration of the same, the learned Civil Judge (Junior Division) has rejected the said application under Order 22 Rule 3 of the C.P.C.

5. During the course of hearing, it is pointed out by the learned Advocate for the opposite party that the petitioner preferred a revisional application being civil revision no.2 of 2005 which was also rejected by the order dated May 22, 2006.

6. It is also pointed out that the misc. case under Order 9 Rule 13 of the C.P.C. filed by the petitioner has been disposed of and in support of such contention, the plaintiff/opposite party has filed affidavit-in-opposition.

7. From the order of the learned Trial Judge, I find that before dismissal of the application under Order 22 Rule 3 of the C.P.C. the learned Trial Judge asked to file the original deed of adoption, since the same was under challenge by the opposite party of the misc. case. But, the petitioner had failed to produce the same and he produced one set of xerox copy which was not accepted as true by the learned Court.

8. The revisional court rejected the application under Section 115A of the C.P.C. on the ground that the application was not maintainable under the provision of the said Section. This is justified and there is nothing to interfere with the said order.

9. Since the application under Order 9 Rule 13 of the C.P.C. has been dismissed finally and no appeal has been preferred against the order of dismissal of the application under Order 9 Rule 13 of the C.P.C., I am of the view that the present application for substitution has become infructuous.

10. This being the position, this application has no merit at all and it cannot be entertained.

11. Accordingly, this application is dismissed with the observations indicated above.

12. There will be no order as to costs.

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

**(Prasenjit Mandal, J.)**

