

DISTRICT : NORTH 24 PARGANAS

In the Court of Ld. 3rd Additional District Judge at Barasat

Title Appeal No. 36 of 2012

Sri Tarun Kumar Das

.....Appellant

-Versus-

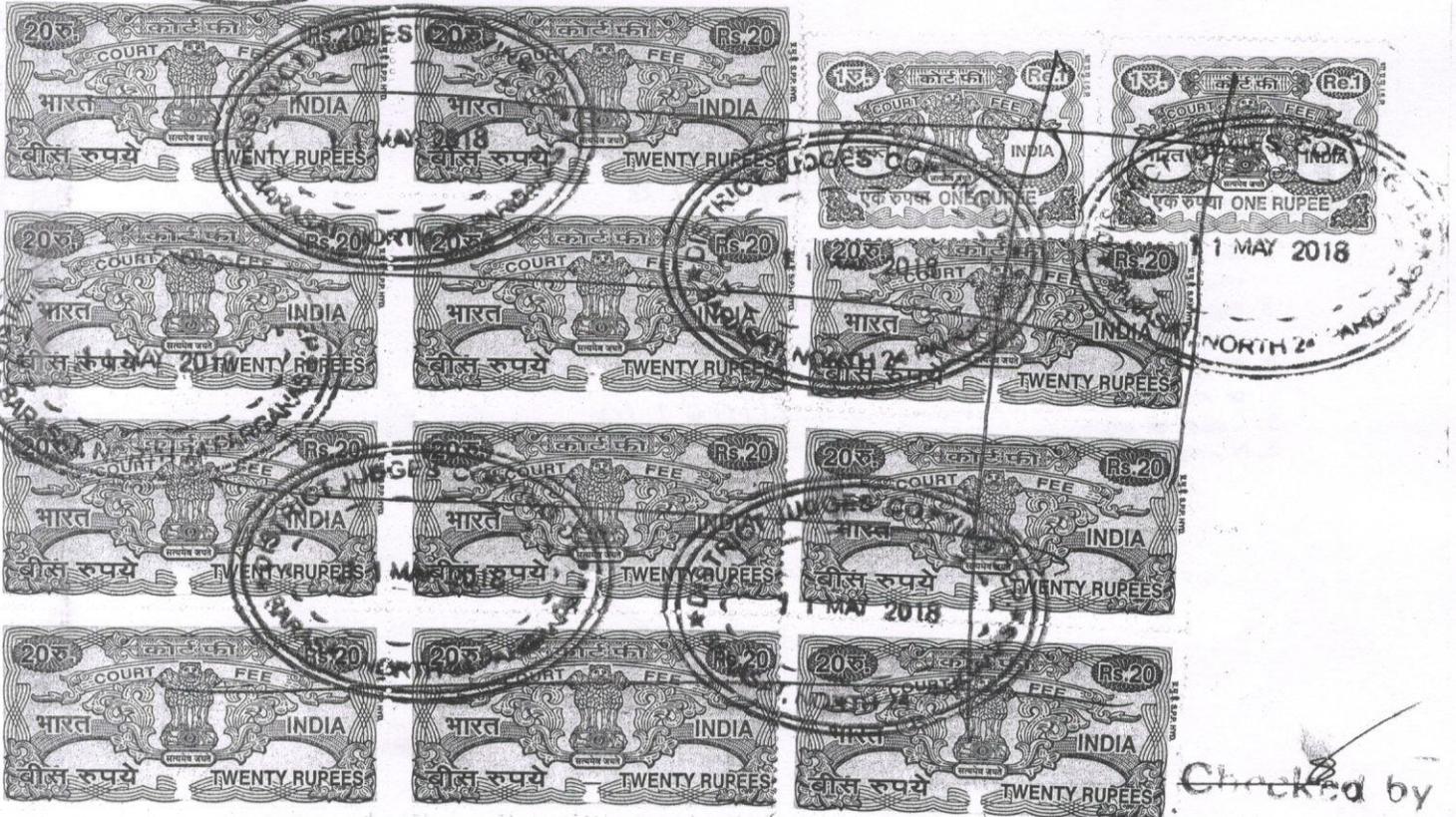
Smt. Arati Das

....Respondent

C-118

Petition No. X- 6016 dated 10-05-2018

Assessment Date : 11/05/2018

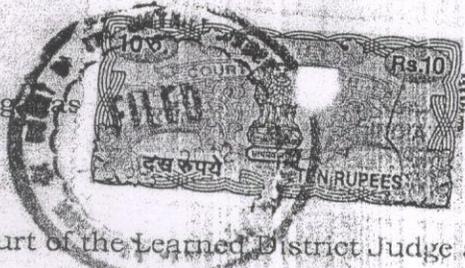


Checked by



Date of application for copy..... 10/05/18
1. Date filed for admission to
registrar's office..... 11/05/18
2. Date of copy of the
document..... 11/05/18
3. Date on which the copy is
ready to deliver..... 14/05/18
4. Date of making the copy
to the applicant..... 14/05/18
5. Cause of copy.....
6. Number of the Xerox sheets.....
Rs. 222/-
1 + 73749/-
8

District : North 24-Parganas



30d Adf
475
x 6016
Plac 7h
Includ 12.11
10/11/12
73-4

TARUN KUMAR DAS

In the Court of the Learned District Judge at Barasat.

© 119/2012 191101086172012

Title Appeal No 315 of 2012

Tarun Kumar Das, son of Late Santi Ranjan Das, Proprietor of M/s Arland, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas having its office earlier at CP-295, Salt Lake City, Sector - I, Kolkata - 700 064 and presently at CJ-30, Salt Lake City, Sector - II, Kolkata - 700 091, in the District of North 24-Parganas

Appellant / Plaintiff

- Versus -

1. Smt. Arati Das, wife of Late Bishnupada Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and now residing at 23-D, Bade Raipur Road, under Police Station Jadavpur, Kolkata - 700 032.

no caveat is pending
5/6/12
D.A.

Presented today
Appel filed within time

Court fees Rs 4,310/-
and is sufficient.

Sheristadar
Judge's Court

5/6/12



Checked by



Ad. Civil Judge

2. Smt. Anjana Chanda, wife of Dr. Bikash Chanda and daughter of Late Bishnupada Das, residing at 23-D, Bade Raipur Road, under Police Station Jadavpur, Kolkata - 700 032



FILED
TARAK...

As per...

3. Amit Kumar Das, son of Late Bishnupada Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and also of 49, Suri Lane, under Police Station Muchipara, Kolkata - 700 014.

..... Respondents / Defendants

Appeal valued at Rs. 70,000/-

Being aggrieved by and / or dissatisfied with the judgement dated 24.04.2012 in Title Suit No. 205 of 2010 passed by the Learned 2nd Civil Judge (Senior Division) at Barasat, North 24-Parganas, the appellant / plaintiff begs to move this Learned Court on the following amongst other :-

GROUNDS

I. For that the dismissal of the suit by the Learned Trial Court is against the evidence on record and hence perverse.



Checked by





FILED
H
TARA

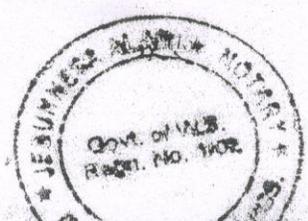
For that the finding of the Learned Trial Court that Section 34 of the Specific Relief Act and the proviso under that Section, a decree of declaration is prohibited where the appellant / plaintiff is entitled to seek further relief failed to do so is misconceived and against Section 34 of the Specific Relief Act read with proviso thereto.

III. For that the Learned Trial Court below failed to appreciate that Specific Relief Act is not exhaustive.

IV. For that the Learned Trial Court has also misconstrued Section 41 of the Specific Relief Act.

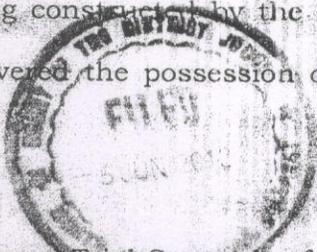
V. For that the Learned Trial Court failed to appreciate the plaint story. In the plaint the appellant / plaintiff has inter-alia pleaded that the appellant / plaintiff entered into an agreement dated 11.04.2002 (Exhibit - 2) with the respondents / defendants under which the respondents / defendants who are owners of the suit property handed over the said land of the respondents / defendants to the appellant / plaintiff for development on the terms and conditions set out in the said agreement and the appellant / plaintiff has been described as assignee and the respondents / defendants as assignors. That the Agreement should be read as a whole to find out the real character of the agreement.

VI. For that as per the Agreement the appellant / plaintiff paid a sum of Rs. 9,26,000/- on 05.12.2002 on the date of the agreement to the respondent / defendant No. 1 and the said land was handed over to the appellant / plaintiff by the respondents / defendants for making construction thereon and it is specifically provided in that agreement





that the respondents / defendants assigned the right, title and interest in the said building constructed by the appellant / plaintiff with his own money and delivered the possession of the property to the appellant / plaintiff.



FILED

TARAK

VII. For that the Learned Trial Court also failed to appreciate that a Title Suit was filed by Sm. Arati Das, the defendant / respondent No. 1 being Title Suit No. 103 of 2003 against the appellant / plaintiff herein inter-alia alleging that the defendant / respondent in that suit was trying to take forcible possession of the suit property which was already delivered to the appellant / plaintiff herein for consideration and prayed for injunction and the said injunction was granted. That ultimately a compromise was arrived at between the parties and the said suit was dismissed for non-prosecution in view of that compromise.

VIII. For that the Learned Trial Court below also failed to appreciate that an irrevocable General Power of Attorney was given by the respondents / defendants Smt. Arati Das, Smt. Anjana Chanda and Amit Kumar Das later through her mother / constituted attorney Smt. Arati Das. The said Amit Kumar Das was later adjudged insolvent by the Hon'ble High Court at Calcutta.

IX. For that the said General Power of Attorney dated 16.04.2008 gives full power to the appellant / plaintiff to raise a building on the suit property and it was further agreed that the ground floor will be of the respondents / defendants / owners of the land and the first floor and second floor of the building will be that of the appellant / plaintiff and the appellant / plaintiff further paid Rs. 1,00,000/- (Rupees one lakh only) by cheque on



checked by



30.07.07 and further Rs. 25,000/- (Rupees twenty five thousand only) in cash on 04.10.2008. Thus the total payment made to the defendants / respondents by the plaintiff / appellant stood at Rs. 10.53,000/-. The said General Power of Attorney has been marked as Exhibit - 7 in the suit.



FILED BY
TARAK MUR...

- X. For that the Learned Court below wrongly held that Exhibit -2 i.e. the assignment agreement having been not registered has no evidentiary value.
- XI. For that the Learned Trial Court failed to appreciate that once a document is marked Exhibit it shall have to be considered by the Learned Trial Court and that document was to be impounded before admitting it as evidence but once that unregistered and not adequately stamped document is admitted in evidence and marked as Exhibit, it can not be thrown out by the Learned Trial Court.
- XII. For that the finding of the Learned Trial Court below that copy of the dismissal of the earlier suit being Title Suit No. 103 of 2003 filed by the defendant / respondent Smt. Arati Das has not been filed in the Title Suit No. 205 of 2010 but Exhibit - 6 is the certified copy of the order sheet passed in the title Suit No.103 of 2003, so this finding is against the evidence on record and hence perverse.
- XIII. For that the finding of the Learned Trial Court that Title Suit No. 205 of 2010 is simply for declaration and such suit is barred under Section 34 and 41 of the Specific Relief Act, is also against the pleading and also against the settled principles of law.

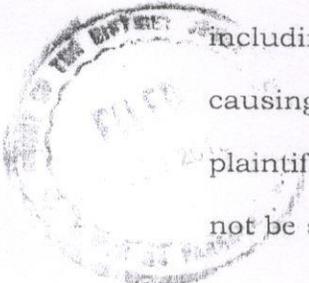


Checked by



FILED
18/04/2011
10:00 AM
MADRAS HIGH COURT

XIV. For that in the plaint of Title Suit No. 205 of 2010 the plaintiff / appellant has prayed for leave under Order 2 Rule 2 of Civil Procedure Code and for declaration that the plaintiff / appellant has the right to do construction work as per the contract dated 11.04.2002 and the Power of Attorney dated 11.04.2002 and for injunction restraining the respondent / defendant Nos. 2 and 3 from transferring their respective share in the said suit property and several other injunctions including injunction restraining the respondent / defendants from causing any obstruction, hindrance to the construction work of the plaintiff / appellant as per agreements and power of attorney, so it can not be said that the suit is merely for declaration.



XV. For that the proviso under Section 34 of the Specific Relief Act does not bar the instant suit No. 205 of 2010 as the plaintiff / appellant has prayed for declaration and for injunction. The suit for declaration with consequential reliefs is not barred by Specific Relief Act.

XVI. For that the Learned Court below also misconstrued Section 41 of the Specific Relief Act and the finding of the Learned Trial Court that the suit is barred under Section 41 is also not sustainable in law. Section 41(e) of the Specific Relief Act says that injunction to prevent the breach of contract performance which would not be specifically enforced, this refers to contract of service. But the present suit is for construction and development work.

XVII. For that the Learned Trial Court below ought to have decreed the suit instead of dismissing it.



Checked by



FILED BY
TARAKI

XVIII. For that the instant appeal is not barred by limitation.

List of documents

Certificate.



- 1. Memo of Appeal -
 - 2. Judgement - 1
 - 3. Vakalatnama - 1
-
- Total - 3

Certified that the grounds set forth above are good grounds of Appeal and I undertake to support the same at the time of hearing.

Tarak Hukhi
Advocate



Checked by



District : North 24-Parganas



FILED BY
TARAK MUKHERJEE
ADV.

In the Court of the Learned District Judge at Barasat.

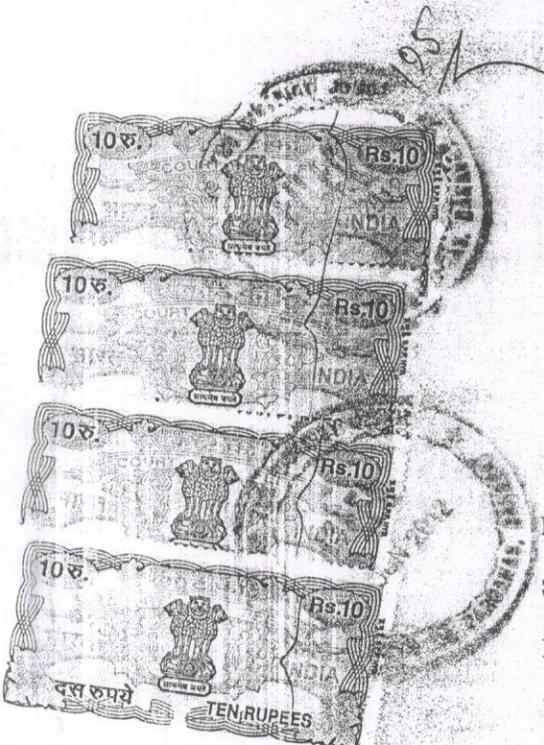
Title Appeal No. 36 of 2012

Tarun Kumar Das, son of Late Santi Ranjan Das, Proprietor of M/s Artland, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas having its office earlier at CD-295, Salt Lake City, Sector - I, Kolkata - 700 064 and presently at CJ-30, Salt Lake City, Sector - II, Kolkata - 700 091, in the District of North 24-Parganas

Appellant / Plaintiff

- Versus -

1. Smt. Arati Das, wife of Late Bishnupada Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and now residing at 23-D, Bade Raipur Road, under Police Station Jadavpur, Kolkata - 700 032.



Tarun Kumar Das

Checked by



2. Smt. Anjana Chanda, wife of Dr. Bikash Chanda and daughter of Late Bishnupada Das, residing at 23-D, Bade Raipur Road, under Police Station Jadavpur, Kolkata - 700 032

FILED BY

TARAK MONTY
ADV.



Amit Kumar Das, son of Late Bishnu pada Das, earlier residing at EC-130, Salt Lake City, Sector - 1, Kolkata - 700 064, in the District of North 24-Parganas and also of 49, Suri Lane, under Police Station Muchipara, Kolkata - 700 014.

..... Respondents / Defendants

Application for injunction under Order 39 Rules 1 and 2 read with Section 151 of Civil Procedure Code.

The humble petition of the appellant / plaintiff abovenamed

Most Respectfully Sheweth:

1. That the appellant / plaintiff is engaged in the business of construction under the name and style "M/s Artland" and the office earlier was at CD-295, Salt Lake City, Sector - 1, under Police Station Bidhannagar (North), Kolkata -700 064, in the District of North 24 Parganas and the present office is at C.J-30, Salt Lake City, Sector - II, Kolkata - 700 091, in the District of North 24-Parganas.



[Signature]

Checked by

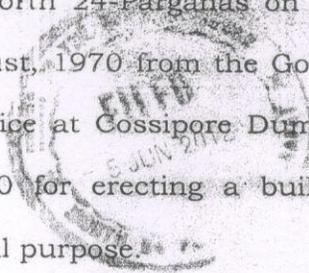


That Bishnupada Das, since deceased, and his wife Smt. Arati Das, the respondent / defendant No. 1 jointly obtained a vacant plot of land measuring more or less 4.2395 cottahs being Plot No. 130, Block-EC, Sector - 1 of the Northern Salt Lake City extension area in the District of 24-Parganas now in North 24-Parganas on lease under a registered Deed of Lease dated 20th August, 1970 from the Governor of West Bengal for 999 years registered at the office at Cossipore Dum Dum, in Book No.1, Volume No. 95, for the year 1970 for erecting a building on the said plot of leasehold land for residential purpose.

3. That after taking possession of the said leasehold land the said Bishnupada Das applied to the Salt Lake Authority i.e. Bidhannagar Notified Area Authority now Bidhannagar Municipality for sanction of the building plan and constructed a partly one storied residential building on the said plot of leasehold land and started living there with his family as described in the schedule below hereinafter referred to as the suit property.

4. That the said Bishnupada Das, however, died intestate on 15th July, 1990 leaving behind his widow Smt. Arati Das, the respondent / defendant No. 1, one married daughter Smt. Anjana Chanda, the respondent / defendant No. 2 and a son Amit Kumar Das, the respondent / defendant No. 3.

5. That after the demise of the said Bishnupada Das, the respondent / defendant No. 1 Smt. Arati Das wanted to make further construction upon the existing one storied residential building but she had no source of income and banks and other financial institutions also refused to sanction the home loan.



FILED
TARAK MUKHERJEE



[Handwritten signature]

Checked by



FILED BY
TARAK MUKHERJEE
ADV.

6. That the said Smt. Arati Das respondent / defendant No. 1 then contacted the plaintiff for making construction of the other two floors on the roof of the existing building and upon negotiation the appellant / plaintiff agreed to undertake the construction work and the respondent / defendant No. 1 agreed to engage the appellant / plaintiff to construct and to complete the said two floors on the existing partly constructed ground floor and to give the first floor and the second floor to the appellant / plaintiff as tenant under the respondents / defendants. Accordingly an agreement by and between the appellant / plaintiff and the respondents / defendants was arrived on 11th April, 2002 which was notarised on 12th April, 2002 inter-alia on the following terms and conditions:-



That the appellant / plaintiff shall pay an amount of Rs. 13,60,000/- to the respondents / defendants as security deposit.

- ii) That the respondents / defendants shall obtain the necessary permission from the competent authority and accordingly a notarised power of attorney was made and executed by the respondents / defendants in favour of the appellant / plaintiff to carry out the construction work.

7. Accordingly the appellant / plaintiff paid Rs. 10,53,000/- on different dates and the last payment was made on 04.10.2008 and all these payments have been acknowledged by way of money receipts by all the respondents / defendants more particularly the respondent / defendant No. 1 Smt. Arati Das.



Jansen Das

Checked by

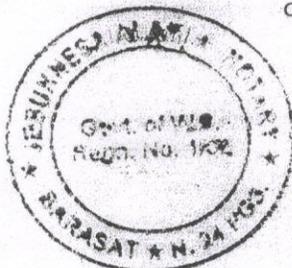


8. That the appellant / plaintiff started construction work for raising two more floors as per the earlier sanctioned plan in the front portion of the ground floor in the said building which was kept vacant by the husband, since deceased, of the respondent / defendant No. 1.

9. That Smt. Arati Das, the respondent / defendant No. 1 filed a title suit being Title Suit No. 103 of 2003 in the Learned 2nd Court of the Civil Judge (Senior Division) at Barasat, North 24-Parganas and during the pendency of the said suit the parties arrived at a compromise and accordingly the respondent / defendant No. 1 did not proceed with the said suit and the said suit was ultimately dismissed for non-prosecution on 29.05.2007 and the respondents / defendants executed a fresh irrevocable Power of Attorney dated 16.04.2008 upon receiving a sum of Rs. 1,25,000/- and on the basis of the said Power of Attorney the appellant / plaintiff obtained a revised sanction plan from the Bidhannagar Municipality.

10. That the respondents / defendants, however, after taking so much money started causing disturbance to the construction work of the plaintiff / appellant and wanted to sell or transfer the said plot of land described in the schedule below to any third party and, therefore, the appellant / plaintiff filed the Title Suit No. 205 of 2010 before the Ld. 2nd Civil Judge (Senior Division) at Barasat, North 24-Parganas inter-alia praying for :

- a) Declaration that the plaintiff has the right to do the construction work as per agreement dated 11.04.2002 and the power of attorney dated 11.04.2002;



Arati Das

Checked by

TANAKBUDHARJEE
ADVOCATE



b) Injunction restraining the defendant Nos. 2 and 3 from transferring their respective shares in the said suit property to the defendant No. 1;

FILED BY

TARAK MURPHY



c) Injunction restraining the defendant No. 1 from transferring the suit property or any part or portion thereof to any third person;

d) Injunction restraining the defendants from causing any obstruction or hindrance in the construction work by the plaintiff according to the agreements and power of attorney executed by the defendants in favour of the plaintiff in terms with the sanctioned building plan;

e) Injunction restraining the defendant Nos. 1, 2 and 3 from engaging or appointing any other person or persons to make construction work in the suit property excepting the plaintiff;

11. That the respondents / defendants inspite of due service of summons as also paper notification did not appear in the said suit and ultimately the said suit was fixed for ex-parte hearing.

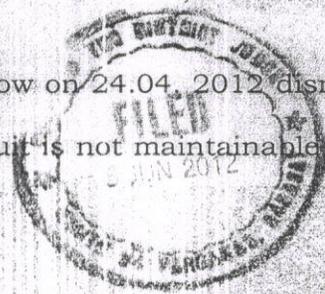
12. That the appellant / plaintiff filed evidence by affidavit and produced all the papers and documents in support of his claim and those documents have been marked as Exhibits.



Jyoti K. Das

Checked by





FILED BY

TAPAK MUKHIN

3. However, the Learned Trial Court below on 24.04.2012 dismissed the said suit inter-alia on the grounds that the suit is not maintainable in law and is barred under Specific Relief Act.

14. That the appellant / plaintiff being aggrieved by and dissatisfied with the said judgment dated 24.04.2012 preferred the above appeal on the grounds sated in the Memorandum of Appeal.

15. That the appellant / plaintiff craves leave of the Learned Court to refer to the said grounds set out in the Memorandum of Appeal at the time of hearing, if necessary.

16. Therefore, the plaintiff / appellant files this application under Order 39 Rules 1 and 2 of the Civil Procedure Code for temporary injunction restraining the respondents / defendants from transferring the suit property described in the schedule below or any part or portion thereof to the respondent / defendant No. 1 and / or to any third person and temporary injunction restraining the respondent / defendant Nos. 1, 2 and 3 from causing any obstruction, hindrance to the construction work by the plaintiff / appellant according to the agreement and the Power of Attorney executed by the respondents / defendants and injunction restraining the respondent / defendant Nos. 1, 2 and 3 from engaging any other person or persons to make construction work in the said suit property except the plaintiff / appellant.

17. That the plaintiff / appellant has a strong prima facie case and any delay in granting injunction will cause irreparable loss and injury not compensatable in terms of money value.

Jawani M. Das





FILED BY
TARAK KUMAR
ADVOCATE

18. That the balance of convenience and inconvenience lies in granting injunction in favour of the plaintiff / appellant.

19. That the matter is very urgent and any delay in granting of injunction as prayed for shall render the appeal and the application for injunction infructuous. Therefore the plaintiff / appellant further prays for ad-interim injunction in terms of the prayer for temporary injunction.

20. This application is filed bonafide and for the ends of justice.



Therefore, the appellant / plaintiff prays for :-

a) Issue notice upon the respondents / defendants to show cause as to why the respondent / defendant Nos. 2 and 3 shall not be restrained by an order of temporary injunction from transferring their respective shares in the suit property to the respondent / defendant No. 1 and/or to any third person;

b) Temporary injunction restraining the respondent / defendant No. 1 from transferring the suit property to any third person;



Jesunesa Alam

Checked by



FILED BY

TARAK

c) Temporary injunction restraining the respondent / defendant Nos. 1, 2 and 3 from causing any obstruction, hindrance to the construction work by the plaintiff / appellant as per agreement and the power of attorney;



d) Injunction restraining the respondent / defendant Nos. 1, 2 and 3 from engaging or appointing any other person or persons to make construction work in the suit property excepting the plaintiff / appellant;

e) Ad-interim injunction in terms of prayers (a), (b), (c) and (d) above;

f) Cost of the application;

g) Pass any other order / orders as your Honour may deem fit and proper.

And for that the appellant / plaintiff as in duty bound shall ever pray.



[Handwritten signature]

Checked by





FILED BY

TARAK MUKHERJEE
ADVOCATE

All that the rent free land measuring 4.2395 cottahs being the land a little more or less together with the partly built one storied building situated in plot No. 130 in Block EC, Sector - I, Salt Lake City, under Police Station Bidhannagar (North), Sub-registration office at Bidhannagar, in the District of North 24-Parganas butted and bounded by :

On the North : Plot No. 24 (5k), 25 (5k) and 129 (4k) in Block EC.

On the South : Plot No. 131 (4k) in Block EC & Type VI Road.

On the East : Plot No. 129 (4k) in Block EC & Type VI Road.

On the West : Plot No. 24 (5k) and 131 (4k) in Block EC.



Jesunesa Alami



Documents filed:



FILED BY

TARAKMURTI
ADUN

1. Deed of lease dated 20.08.1970.

[Handwritten signature]

2. Agreement dated 11.04.2002.

3. General Power of Attorney dated 11.04.2002 and 16.04.2008.

4. Money receipts dated 12.11.02, 02.12.02, 05.12.02, 06.12.02, 30.07.07 and 04.10.08.

5. Order dated 29.05.2007 dismissing the Title Suit No. 103/03 for non-prosecution by the respondent / defendant No. 1.

[Handwritten signature]



Checked by



AFFIDAVIT



SL No. 12039
Date: 05 JUN 2012

I, Tarun Kumar Das, son of Late Santi Ranjan Das, aged about 57 years, by faith Hindu, by occupation business, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas, do hereby solemnly affirm and say



follows:

1. That I am the appellant / plaintiff in the above case and am well conversant with the facts and circumstances of the case and I am competent to file the instant appeal.
2. That the statements made in paragraphs 11 to 16 are true to my knowledge derived from the records which I verily believe to be true and the rest are my respectful submissions before this Learned Court.

I sign this affidavit on this the 05th day of June, 2012 at the court premises.

Tarun Kumar Das

Deponent

Prepared in my office

Jarab Mukherjee

Advocate

Identified by me

Jarab Mukherjee

Advocate

Solemnly affirmed on 05/6/12
by the party being duly identified by
Advocate *T. Mukherjee*
This document contains twelve
pages and is checked off
Jarab Mukherjee
Notary Clerk

Jarab Mukherjee
12
Notary Public, Barasat
North 24 Parganas, West Bengal

05 JUN 2012





12/12

Agar
of course his

Filed by
Yadav Mukherjee
Advocate

DISTRICT : NORTH 24 PARGANAS.

In the 3rd Court of Ld. Additional District Judge at Barasat

Ref : T.A. NO. 36 of 2012

Sri Tarun Kumar Das

... Appellant

Versus

Smt. Arati Das and another

... Respondents

Received copy
and
objected to
B.P.

PETITION ON BEHALF OF THE APPELLANT/PLAINTIFF FOR EXPUNGING THE NAME OF DECEASED DEFENDANT/RESPONDENT NO.1- SMT. ARATI DAS

Most Respondent sheweth :-

1. That the appellant/ plaintiff filed the original suit being no. T.S. 205 of 2009 and subsequently filed the instant appeal against the respondents/defendants.
2. That during pendency of the instant appeal respondent no.1 Smt. Arati Das died leaving behind her only daughter Anjana Chanda and only son Arnit Kumar Das as her only legal heirs and successors who are already on record as respondent nos. 2 & 3 respectively.
3. That accordingly the substitution of deceased respondent no.1 does not arise at all as her legal heirs are already on record and hence name of deceased respondent no.1 should be expunged from the cause title of the memo of appeal and register of appeal of the instant court for ends of justice.
4. That the instant petition is made bonafide.

Hence, it is prayed that your Honour would graciously be pleased to expunge the name of deceased respondent no.1 from the cause title of the memo of appeal and register of appeal of the instant court for ends of justice.



Checked by



N.R. SL. No. 5557
Date 06 FEB 2014



BEFORE THE NOTARY PUBLIC
BARASAT NORTH 24 PARGANAS

AFFIDAVIT

I, Tarun Kumar Das, S/o. Late Santi Ranjan Das, aged about 5.9 years, by faith Hindu, by occupation : Business and residing at EE/13/8, Salt Lake City, Sector -II, Kolkata- 700 091, P.S. Bidhanagar (East), District : North 24 Parganas, do hereby solemnly affirm and state as follows :-

1. That I am the plaintiff/appellant of the instant appeal and am well conversant with the facts and circumstances of the instant appeal.
2. That the statements as made in paras 1 to 4 of this petition are true to my knowledge and the rest are my respectful submission before this Ld. Court.

Solemnly affirmed on 06/2/14
by the party being duly identified by
Advocate M. K. Mukherjee
This document contains
pages and is checked by
Notary Clerk.

[Signature]
Signature of the deponent,
Identified by me :
M. K. Mukherjee
Advocate
06/02/14

[Signature]
(Jeevanesa Alam)
Notary Public, Barasat
North 24 Pys, REGN No 1102

06 FEB 2014

[Signature]
Checked by

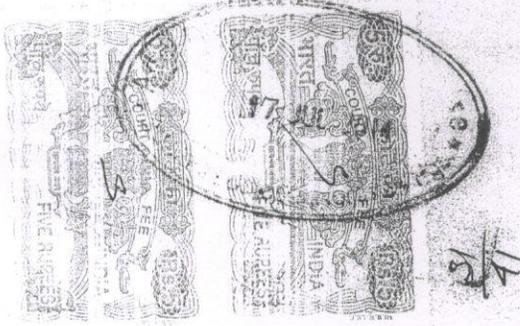


District: North 24-Parganas

In the Court of the Learned District Judge at Barasat.

Arjuna Chouda
by
Arjuna Chouda

Title Appeal No. 36 of 2012



Tarun Kumar Das, son of Late Santi Ranjan Das, Proprietor of M/s Artland, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas having its office earlier at CD-295, Salt Lake City, Sector - I, Kolkata - 700 064 and presently at CJ-30, Salt Lake City, Sector - II, Kolkata - 700 091, in the District of North 24-Parganas

Appellant / Plaintiff

- Versus -

1. Smt. Arati Das, wife of Late Bishnupada Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and now residing at 23-D, Bade Raipur Road, under Police Station Jadavpur, Kolkata - 700 032 expunged under order No. 19 dated 15.03.14;

Received by
Surekha Mukherjee
Adv.
19.7.14.



Checked by





2. Smt. Anjana Chanda, wife of Dr. Bikash Chanda and daughter of Late Bishnupada Das, residing at 23-D, Bude Raipur Road, under Police Station Jadavpur, Kolkata - 700 032;

Anjana Chanda
Wife of
Dr. Bikash Chanda

3. Amit Kumar Das, son of Late Bishnu pada Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and also of 40, Suri Lane, under Police Station Muchlipara, Kolkata - 700 014.

..... Respondent / Defendant

An application by the Petitioner / Respondent No. 2

The humble application on behalf of the Petitioner / Respondent No. 2 abovenamed most respectfully

SHEWETH:

1. That in the above appeal against the ex-parte judgement passed by the Ld. Trial Court dismissing the suit has been filed by the Plaintiff / Appellant.



[Handwritten signature and scribbles]



Aiyana Chanda
by
[Signature]

2. The Petitioner / Respondent No. 2 herein received the summons of the appeal. The Petitioner / Respondent No. 2's mother however entered appearance in the appeal and therefore the Petitioner / Respondent No. 2 did not enter appearance earlier in the appeal.

3. It is stated that the Respondent / Defendant No. 1 died intestate on 21.01.2014 and her name has been expunged accordingly under order No. 19 dated 15.03.2014.

4. That the Respondent / Defendant No. 3 the full brother of the Petitioner / Respondent No. 2 was declared an insolvent by the Hon'ble High Court, Calcutta (Exhibit No. 13) and thereafter his whereabouts are not known.

5. That the Plaintiff / Appellant as per the Agreement dated 11.04.2002 (Exhibit No. 3) has already made good amount of construction and also spent a good amount of money by paying Rs. 10,53,000/- Lakhs by cheques and cash to the Respondent / Defendant No. 1. Therefore the Petitioner / Respondent No. 2 does not have any objection if any opportunity is given to resolve the dispute on mutual consent of both the Parties.

6. That the Petitioner / Respondent No. 2 states and submits that the Petitioner / Respondent No. 2 wants to settle the dispute with the Plaintiff / Appellant amicably for which an opportunity may be given to settle such dispute.

7. Therefore if the suit may please be remanded back to the Trial Court, then the Petitioner / Respondent No. 2 does not have any objection or alternatively the matter may be referred to the Ld. Lok Adalat.



Checked by



8.
justice.

That the instant application is made bona fide and for the ends of

Anjana Chandra
by
[Signature]



In the circumstances stated above it is humbly prayed that Your Honour would be graciously pleased to pass an order referring the suit on remand to the Ld. Trial Court or alternatively to the Ld. Lok Adalat for settlement and be further pleased to pass such other and / or further order / orders as to Your Honour may deem fit and proper.

And your Petitioner / Respondent No. 2 as in duty bound shall ever pray.







AFFIDAVIT

BEFORE THE NOTARY PUBLIC
BARASAT NORTH 24 (BARASAT)

2576)
7-JUL-2014

I, Smt. Anjana Chanda, wife of Dr. Bikash Chanda and daughter of Late Bishnupada Das, aged about 62 years, by faith Hindu, by occupation housewife, residing at 23-D, Bade Raipur Road, under Police Station Jadavpur, Kolkata - 700 032, do hereby solemnly affirm and say as follows :

1. That I am the Petitioner / Respondent No. 2 in the above case and am well conversant with the facts and circumstances of the case and I am competent to file the instant application.

2. That the statements made in paragraphs *two* to *two* are true to my knowledge derived from the records which I verily believe to be true and the rest are my respectful submissions before this Learned Court.

I sign this affidavit on this the *17th* day of *July*, 2014 at the court premises.

Anjana Chanda

Deponent

Prepared in my office

Identified by me

[Signature]
Advocate *17.07.14*

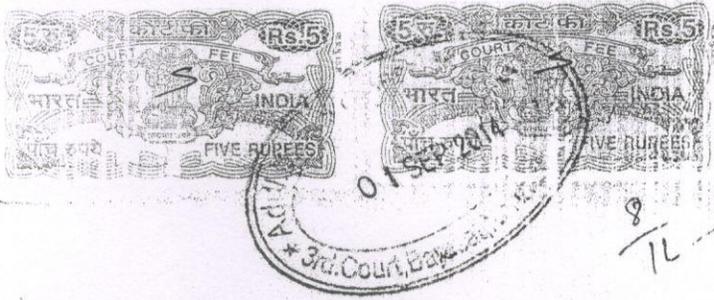
Krishnendu Chakrabarty
Advocate *17.07.14*

[Signature]
Notary Public, Barasat
North 24 (P.S. REGN No 103)

Solemnly affirmed by
the party being duly sworn
Advocate *[Signature]*
This declaration is
true and is checked by
[Signature]
Notary Clerk

7 JUL 2014





Sharmila Das
Cognate attorney of
Respondent No. 3.
[Signature]

DISTRICT :- NORTH 24 PARGANAS
IN THE COURT OF LD. 3RD ADDITIONAL DISTRICT JUDGE AT BARASAT

T.A. No. 36 / 2012

Tarun Kumar Das

..... Appellant

- VS -

Smt Arati Das & others

..... Respondents

The humble petition on behalf of
the Respondent No.-3 showing
causes being represented by his true
and lawful attorney.

Most respectfully sheweth :-

1. That the Respondent No.-3 has come to know from a reliable source that a suit for declaration was initiated by the appellant against him and other being T.S. No. 205/2010 before the L1. Civil Judge (Sr. Divn.) Second Court at Barasat which was dismissed exparte.
2. That the Respondent No.-3 has also come to know that being aggrieved at and dissatisfied with the said order, the plaintiff / appellant has also filed the instant appeal which is pending for adjudication.

Received copy
& objected to.
Honesty blank by
Advocate
01.9.14.

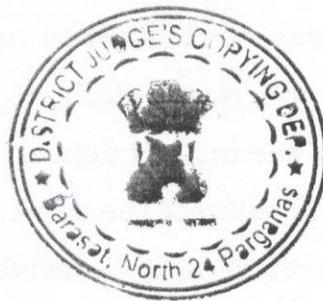




Sharmila Das
Contributor Attorney of
1000
S. Das
Adv.

-:: (2) ::-

3. That having learnt, the attorney of the Respondent No.-3 made searches of the record through her Ld. Advocate and has come to know that today is poised for further hearing of the appeal.
4. That the Respondent No.-3 had no knowledge previously about the instant appeal as well the suit, so the respondent no opportunity to take part and to file written objection in his defence.
5. That the Respondent No.-3 did not get any summons from the court of Ld. Civil Judge Sr. Divn. 2nd Court at Barasat in T.S. No. 205/2010 nor the summons of the instant appeal.
6. That the Respondent No.-3 wants to contest the instant appeal after knowledge of the same, so he should be afforded with an opportunity of being heard following the principle '**audi alteram partem**'.
7. That there was no negligence or laches /false from the part of the respondent, if he know about the institution of the instant appeal earlier he must have come earlier to contest the same, so the situation was beyond his control and knowledge which is required to be condone by the grace of the Ld. Court.
8. That if the respondent No.-3 is not allowed to take part in this appeal and if the appeal is heard exparte without giving him any opportunity to argue, he would have to suffer an irreparable loss and injury which can





Sharmila Das
Comptroller of Accounts
Barasat

--- (3) ---

not be compensated by any money value.

- 9. That the application is made bonafide and for the interest of justice.
- 10. That the causes shown by the Respondent No.-3 is bonafide and can be accepted by the Ld. Court as sufficient.

In view of the aforesaid facts and circumstances it is humbly prayed that your Honour would graciously be pleased to pass an order accepting the causes shown as bonafide and convincing to meet the ends of justice.

AND

Pass such other order and/or orders as your Honour may deem fit and proper.

AND for such act of kindness your petitioner as in duty bound shall ever pray.

Dated The **1st** day of **September 2014**

VERIFICATION

That the above statements are all true to the best of my knowledge and belief and I put my signature on this verification today at Barasat Court Premises.

Sharmila Das
Comptroller of Accounts
Barasat



DISTRICT :- NORTH 24 PARGANAS
IN THE COURT OF LD. 3RD ADDITIONAL DISTRICT JUDGE AT BARASAT

T.A. No. 36 / 2012

Tarun Kumar Das

..... Appellant

- VS -

Smt. Arati Das & others

..... Respondents

The humble petition on behalf of the Respondent No.-3 Amit Kumar Das represented by his true and lawful attorney SHARMILA DAS for vacating exparte order of hearing of appeal.

Most respectfully sheweth :-

1. That the Respondent No.-3 has come to know from a reliable source that a suit for declaration was initiated by the appellant against him and other being T.S. No. 205/2010 before the Ld. Civil Judge (Sr. Divn.) Second Court at Barasat which was dismissed exparte.

That the Respondent No.-3 has also come to know that being aggrieved at and dissatisfied with the said order, the plaintiff / appellant has also filed the instant appeal which is pending for adjudication.



Received copy
& objected to
Maszab Huda
01-9-14.

Sharmila Das
Counsel for appellant
Barasat no. 2
Barasat







Sharmila Das
Constituted attorney of
Respondent No. 3.
Pooja Das

-:: (2) ::-

3. That having learnt, the attorney of the Respondent No.-3 made searches of the record through her Ld. Advocate and has come to know that today is poised for further hearing of the appeal.
4. That the Respondent No.-3 had no knowledge previously about the instant appeal as well the suit, so the respondent no opportunity to take part and to file written objection in his defence.
5. That the Respondent No.-3 did not get any summons from the court of Ld. Civil Judge Sr. Divn. 2nd Court at Barasat in T.S. No. 205/2010 for the summons of the instant appeal.
6. That the Respondent No.-3 wants to contest the instant appeal after knowledge of the same, so he should be afforded with an opportunity of being heard following the principle "**audi alterem partem**".
7. That there was no negligence or laches /false from the part of the respondent if he know about the institution of the instant appeal earlier he must have come earlier to contest the same, so the situation was beyond his control and knowledge which is required to be condone by the grace of the Ld. Court.



Checked by





--: (3) :--

Shamila Jais
Proprietor attorney of
Respondent No. 3,
Prayer Section

8. That if the respondent No.-3 is not allowed to take part in this appeal and if the appeal is heard exparte without giving him any opportunity to argue, he would have to suffer ~~an~~ irreparable loss and injury which can not be compensated by any money value.
9. That the application is made bonafide and for the interest of justice.

In view of the aforesaid facts and circumstances it is humbly prayed that your Honour would graciously be pleased to pass an order vacating the exparte order of hearing of appeal by giving an opportunity to the respondent No.-3 to argue his case to meet the ends of justice.

AND

Pass such other order and/or orders as your Honour may deem fit and proper.

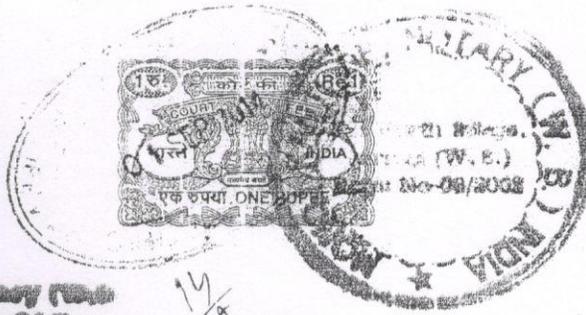
AND for such act of kindness your petitioner as in duty bound shall ever pray.

Dated The **1st** day of **September 2014**

Checked by







Sharmila Das

Notary Public (W.E.)
Notary, Salt Lake City

14/9
-: (4) :-

AFFIDAVIT

I, **Amit Kumar Das**, aged about 60 years, son of Late Bishnu Pada Das, by faith- Hindu by Occupation- Service, residing at EC-130, Salt Lake City, Sector-I, Kolkata- 700064 and also at 49, Suri Lane, P.S.- Muchipara, Kolkata- 700014, represented by his true and lawful attorney **SHARMILA DAS**, wife of Amit Kumar Das, aged about 55 years, by faith- Hindu, by Occupation- Teacher, residing at EC-130, Salt Lake City, Sector-I, Kolkata- 700064 and also at 49, Suri Lane, P.S.- Muchipara, Kolkata- 700014, do hereby solemnly affirm and declare as follows :-

16
21 SEP 2014

- (a) That I am one of the Respondents of the instant appeal and I am well conversant with the facts and circumstances of the instant application.
- (b) That the statements made in the foregoing paragraphs from para (1) to (9) are all true.
- (c) That the rest are my humble submission at the time of hearing.

That the above statements are all true to the best of my knowledge and belief.

1st day of Sep 2014
D. K. Das

D. K. Das
NOTARY (W.E.)
Notary, Salt Lake City

21 SEP 2014

Sharmila Das
Combinatorial attorney of Respondent
nos. *Sharmila Das*





DISTRICT: NORTH 24-PARGANAS.

16/12/12

Handwritten signatures and notes:
Fild by [Signature]
Dewan [Signature]

IN THE COURT OF LD. 3RD ADDITIONAL DISTRICT JUDGE AT BARASAT

TITLE APPEAL NO. 36 OF 2012

TARUN KUMAR DAS

----- Appellant

-Versus-

SMT. ARATI DAS & ORS.

----- Respondents

WRITTEN OBJECTION ON BEHALF OF THE APPELLANT
TO THE APPLICATION SUBMITTED ON BEHALF OF THE RESPONDENT NO. 3
SHOWING CAUSE (FOR BEING ALLOWED TO APPEAR IN THE APPEAL)
AND
THE APPLICATION FOR VACATING THE ORDER FOR EX-PARTE HEARING OF
APPEAL

Handwritten notes:
5/10/12
[Signature]

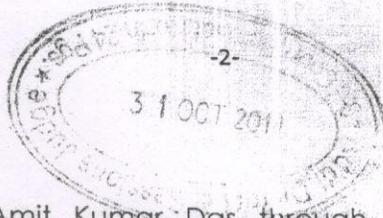
The humble petition of objection on
behalf of the Appellant abovenamed

Most Respectfully Sheweth:-

1. The applications under reply for showing causes to enable
appearance and for vacating the order fixing the appeal for ex-parte







of account KE - Das

*Filed by
Amit Kumar Das*

hearing, filed by Amit Kumar Das through his alleged Constituted Attorney, under an alleged General Power of Attorney executed on 08.02.2002 in favour of his wife Sharmila Das, at this juncture is on the face of the record an act of fraud and the same has been taken out in a malafide manner to deceive and defraud the Appellant.

I humbly state and submit that the said Amit Kumar Das was untraceable for quite a long time after declaring himself insolvent by an order dated 07.03.2003 of the Hon'ble High Court at Calcutta in IC No. 2 of 2003 surfacing at times when he needed money and then again going underground and making himself untraceable once again. With such a dubious past record he should have come forward before this learned Court in person to contest the case, if at all, instead of appearing through his purported legally constituted attorney through a purported Power of Attorney the veracity of which is suspect. I say that the purported Power of Attorney which forms the basis of the applications under reply is a manufactured document for the purpose of contesting the instant appeal and thus being suspect this learned Court would be pleased to ascertain the veracity of the same as a preliminary point before adjudication into the merits of the said applications.

I humbly submit that if it is found that the said purported Power of Attorney is a manufactured document then this learned Court would be pleased to initiate proceedings under Section 195 read with Section 340 of the Code of Criminal Procedure, 1973 for launching of prosecution for







W. Anand Kumar Das

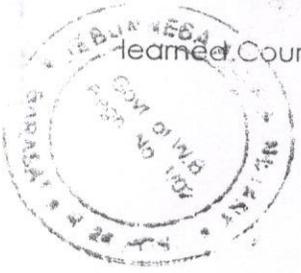
File by
Anand Kumar Das

the offences committed by Shri Amit Kumar Das aided and abetted by his wife Sharmila Das, which offences are against public justice and are liable for prosecution inter alia under the provisions of Sections 177, 182, 193, 196, 199, 200, and 209 of the Indian Penal Code.

In this context, it would not be out of place to mention that it is now well settled by judgements of the Hon'ble Supreme Court, one being Chandra Shashi Vs. Anil Kumar Verma, to which I crave leave to rely upon at the time of hearing, that contempt jurisdiction has been conferred not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he violates court's orders, but also to keep the stream of justice clear and pure so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples.

1. therefore, humbly submit that in view of such facts and circumstances in the instant case as elucidated hereinbefore, this learned Court would be pleased to exercise jurisdiction under Section 10 of the Contempt of Courts Act, 1971. I crave leave to make further submissions in this regard at the time of hearing of the instant application.

2. A short list of relevant dates is given here below to enable this learned Court to ascertain the factual position:





Manoj Kumar Das

Manoj Kumar Das
Manoj Kumar Das

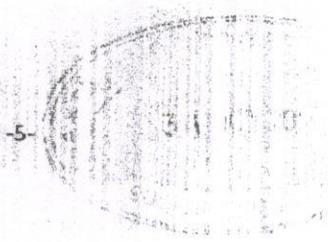
- 20.08.1970 Deed of Lease executed
- 15.07.1990 Death Certificate of one of the original Lessees Bishnupada Das
- 11.04.2002 Agreement for Assignment executed by and between the appellant and the defendants
- 11.04.2002 General Power of Attorney executed by the appellant and the defendants in favour of the appellant
- 12.11.2002
- 02.12.2002
- 05.12.2002
- 06.12.2002
- 30.07.2007
- 04.10.2008 Money receipts evidencing receipt of money by the defendants from the appellant
- 20.03.2007 Declaration of insolvency of Amit Kumar Das, defendant No. 3 by the Hon'ble High Court in Insolvency Case No. 1C-2 of 2003
- 29.05.2007 Compromise petition filed in T. S. No. 103/03
- 29.05.2007 Order of non-prosecution of T. S. No. 103/03
- 16.04.2008 Irrevocable Power of Attorney executed by the defendants in favour of the appellant

3: In the backdrop of the above before dealing with the statements contained in the said applications I say that the said applications are neither maintainable in law nor on facts

1. On facts:







Amit Kumar Das

*not found
Dewan Ps-*

i. It is a matter of record that Amit Kumar Das had been one of the signatories to the agreement executed on 11.04.2002 along with the respondent Nos. 1, since deceased, and 2 and that it is a matter of record that while executing the said agreement along with certain other agreements and declarations authorizing the appellant to develop the suit property, the respondents received the total sum of Rs. 9,26,000/-. The document dated 11.04.2002 is lying with the record along with the original money receipts evidencing such payment.

A copy of the said agreement is filed herewith and marked as "Annexure-A" hereto.

ii. It shall appear from the said agreement that on the said date Amit Kumar Das, the respondent No. 3 did put his signature on the said document and he also executed a Power of Attorney on the same day empowering his mother, the respondent No. 1, since deceased, to represent him as the Constituted Attorney and reference to such Power of Attorney has been made in the body of the said agreement dated 11.04.2002.





[Handwritten signature]

*for further
Rajm P.S.*

A copy of the Power of Attorney executed by the respondent No. 3 authorizing the respondent No. 1, since deceased, to act as his Constituted Attorney is filed herewith and marked as "Annexure-B" hereto.

iii. It is also a matter of record that the respondent No. 1, since deceased, ventured to file the Title Suit No. 103 of 2003 in the court of the Ld. Civil Judge (Senior Division) at Barasat making your petitioner as also the other respondents parties in the said suit challenging the aforesaid Agreement and understanding and that ultimately the aforesaid suit was discontinued and the same was dismissed as withdrawn on 29.05.2007.

iv. It is also a matter of record that after the dismissal of the aforesaid Title Suit No. 103 of 2003 the respondent No. 1, since deceased, for self and being Constituted Attorney of the respondent No. 3 received a further sum of Rs. 1,02,000/- by A/c payee cheque dated 30.07.2007 and a further sum of Rs. 25,000/- by cash on 04.10.2008.

A copy of the money receipt showing such further payment is filed herewith and marked as "Annexure-C" hereto.



Checked by



Chandana Sen

*bd
Alam Jute
PSC*

v. At this juncture the respondent Nos. 1, sine deceased, and 2 again executed another General Power of Attorney on 16.04.2008 admitting the execution of the previous documents and the development agreement.

A copy of the said document dated 16.04.2008 is filed herewith and marked as "Annexure-D" hereto.

vi. Under the aforesaid facts and circumstances when the respondents in conspiracy with each other again tried to interfere with the development activity of the appellant in the suit premises, the suit had been filed before the Ld. Trial Court below being Title Suit No. 205 of 2010.

The respondent No. 1, since deceased, had been duly served with the summons of the Title Suit No. 205 of 2010 before the Ld. Trial Court below who had been the Constituted Attorney of the respondent No. 3. The other respondents also did not appear in the suit inspite of service of summons and accordingly the Ld. Trial Court below after accepting the service of summons set down the suit for ex-parte hearing and disposed of the suit ex-parte which is the subject matter of the instant appeal.







Arjun K. Das

Arjun K. Das

vii. Since none of the respondents do have any justified defence for them choosing not to appear before the Ld. Trial Court below the suit has accordingly been disposed of ex-parte. It is a matter of record that the notice had been inserted in the newspaper as per direction of the Ld. Trial Court below when the respondents did not enter appearance inspite of service of summons by other available mode.

A copy of the two newspaper insertions in Aajkaal dated 17th July, 2011 and 04th August, 2013 are filed herewith and marked as "Annexure-E" hereto.

ii. In law:

i. the purported Power of Attorney which forms the basis of the applications under reply is a manufactured document for the purpose of contesting the instant appeal; hence the said applications are not maintainable.

Even assuming that the said purported Power of Attorney was ever executed in accordance with law the subsequent conduct of the respondent No. 3



Checked by





Handwritten signature or initials.

Handwritten signature or initials.

believes his having acted in accordance with the said purported Power of Attorney and therefore the said purported Power of Attorney became non est in the eye of law and any purported action sought to be taken thereunder would also become non est in the eye of law.

ii. The respondent No. 3 who did not appear before the Ld. Trial Court below and who had been although represented by the respondent No. 1, since deceased, being his mother and Constituted Attorney, cannot now take out the application inspite of not entering appearance in the appeal even after service of notice, or can lawfully or otherwise seek indulgence of this Ld. Court for contesting the appeal when the impugned judgement had been delivered ex-parte for the non-appearance of the respondent No. 3 inspite of due service of summons.

iii. The applications have been taken out in a malafide manner by the respondent No. 3 who never sought to deny the allegations in the plaint before the Ld. Trial Court by submitting his written statement. The defendant who had no occasion to deny the allegations stated in the plaint in the Ld. Trial Court





Pravin M. Das

Pravin M. Das

cannot at this juncture intervene in the instant appeal taken out by your petitioner / appellant against the ex-parte judgement and decree as now the appeal is in between the Ld. Court and the appellant.

- iv. It is a matter of record that the respondent No. 3 had been declared insolvent by the Hon'ble High Court at Calcutta in I.C. No. 2 of 2003 on 07.03.2003.

After such declaration of insolvency he cannot contest the case which relates to an immovable property not acquired by him subsequent to such declaration of insolvency but which is an immovable property interest whereof was acquired by him by virtue of hereditary succession prior to his declaration of insolvency.

Your appellant craves leave to rely upon all the relevant documents and make further submissions at the time of hearing.

4. The appellant states that it could also be that Smt. Sharmila Das, wife of the said respondent No. 3 has ventured to fabricate and manufacture a Power of Attorney dated 08.02.2002 and got the same notarized in conspiracy with the Notary Public B.K. Banerjee and by forging the signature of the respondent No. 3. Hence this learned court



Pravin M. Das



2-11-2020
2-11-2020

Handwritten signature/initials

would be pleased to consider this aspect of the matter also and pass necessary orders for delivering substantive justice.

5. It is to also place on record that the respondent No. 2 entered appearance in the instant appeal and has supported the case of the appellant by filing an application to the said effect which is part of the records herein.

6. It is humbly submitted that considering the circumstances the respondent No. 3 may be directed to personally appear before this Ld. Court for comparing his alleged signature appearing in the purported Power of Attorney produced by his wife Sharmila Das in order to ascertain the factual position and for the ends of Justice.

7. It is submitted that the show cause application filed by the respondent No. 3 through his alleged Constituted Attorney is absolutely bogus and the same does not explain any reasons or grounds which could be accepted at this juncture for setting aside the order fixing the appeal for ex-parte hearing.

8. It is therefore submitted that the applications for showing cause and setting aside or re-calling the order fixing the appeal for ex-parte hearing be rejected with exemplary costs.



Checked by



of Justice Mr. Jaisankar

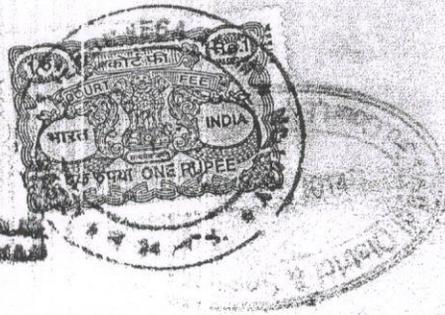
10/11/2019
Rajesh Kumar

It is therefore, prayed that the applications under reply may be rejected with exemplary costs, and proceedings initiated under Section 195 read with Section 340 of the Code of Criminal Procedure, 1973 for launching of prosecution for the offences committed by Shri Amit Kumar Das aided and abetted by his wife Sharmila Das, which offences are against public justice and are liable for prosecution under the provisions of the Indian Penal Code and / or pass such other order or orders as your Honour may deem fit and proper.



Checked by





BEFORE THE NOTARY PUBLIC
NORTH 24 PARGANAS
AFFIDAVIT

N.R. SL. NO. 40030

1 OCT 2014

I, Tarun Kumar Das, son of Late Santi Ranjan Das, aged about 59 years, by faith Hindu, by occupation business, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas, do hereby solemnly affirm and say as follows :

1. That I am the appellant in the above case and am well conversant with the facts and circumstances of the case and I am competent to file the instant suit.

2. That the statements made in paragraphs 1 to 5 are true to my knowledge derived from the records which I verily believe to be true and the rest are my respectful submissions before this Learned Court.

I sign this affidavit on this the 31st day of October, 2014 at the court premises.

Tarun Kumar Das

Deponent

Prepared in my office

Debmoulik Ghosh
Advocate

Identified by me

Debmoulik Ghosh
Advocate

Solemnly affirmed on 31/10/14
by the party being duly identified by
Advocate *Debmoulik Ghosh*
This document contains *thirteen*
pages and is checked by

31 OCT 2014 Notary Clerk

Debmoulik Ghosh
Notary Public, North 24 Parganas, 1193



BEFORE THE NOTARY PUBLIC
Barasat, North 24 Parganas



Sharmila Das

Dash: - North 24 Parganas

In the Court of B. Bro. Add. Dist. Judge at Barasat.

T. A. 36/12

Tarun Das vs Amit Das Das
Appellants Respondents

Apparait in opposition against the
Win the objection filed by the appellants

The 2d Apparait for
the appellants is
not available in
his room, hence
copy is enclosed
for your
reference.

FILE NO. 149 2012

23 MAR 2012

Reason of delay
be objected to
Harsh Kumar
Datta.

I, Sri Amit Das aged about 45 years s/o Mr. Bishnupada Das by caste
Hindu, by occupation - Service Government, resident of Block EC-180,
Salt Lake city, P.S. North Bidhannagar, Kolkata-70004, represented
by Sharmila Das being the true and lawful attorney of Amit Das
do hereby solemnly affirm and declare as follows: -

- 1) That the instant written objection is vague, frivolous, having
no leg to stand upon, hence it should be made a fair go by e.
This is true to my knowledge.
- 2) That the instant written objection is bad in law and fact, as such
not tenable in the eye of law. --- This is true to my knowledge.
- 3) That I state that the power of attorney executed by me in favour of
my wife Sharmila Das is genuine and not manufactured as stated by
the appellants --- This is true to my knowledge.
- 4) That since the power of attorney dated 8/2/2002 is genuine, the
question of initiating the alleged proceeding against the respondents
nos 2 and 3 and this attorney does not arise at all and no offence as
alleged was committed by any one of us. --- This is true to my knowledge.
- 5) That I submit that so far the power of attorney dt 11.4.2002
is concerned, it was cancelled by the respondents and not irrevocable
power of attorney was executed by the respondent nos 2 and 3 in favour
of the appellants on 16/4/2008. The documents submitted by the
appellants with his written objection purported to be dated 16.8.08
does not bear the signature of the respondents and the alleged
power of attorney holder can not delegate the powers conferred upon
her as per law. --- This is true to my knowledge.
- 6) That the respondent nos 2 and 3 submits that the alleged power of
attorney dt 11.4.2002 has been, revoked by him.
This is true to my knowledge.





Shamila Das

(2)

- 7) The Respondent no 3 can not remember whether he at all executed any Power of attorney in favour of his mother and if it be at all, that is deemed to be reversed / cancelled on the death of his mother. The appellant has not served any copy of Power of attorney to the respondent, as such he is not in a position to make any comment.
--- This is true to my knowledge.
- 8) That the Respondent no 3 has no knowledge whether alleged T.S. 103/03 was at all filed by the Respondent no 1 (since deceased) against him and/or about its withdrawal.
--- This is true to my knowledge.
- 9) That the respondent further states that he has no knowledge as to whether the Respondent no 1 at all received the alleged amount from the appellant on his behalf as his constipated attorney.
--- This is true to my knowledge.
- 10) That the Respondent no 3 does not know about the execution of the alleged Power of attorney dt 16.8.1103 as he was not the party to the said instrument. --- This is true to my knowledge.
- 11) That the Respondent has no knowledge as to whether the alleged T.S 205/10 was at all filed and its result prior to appearance in the instant appeal since he was not served with any summons.
--- This is true to my knowledge.
- 12) That the Respondent states that the Power of attorney which forms the basis of respondent's application is not manufactured because it was executed in the year 2002 by the Respondent himself in favour of his wife which had had force for appearance by the attorney as well as the filing of the instant application. --- This is true to my knowledge.
- 13) That the Respondent no 3 if he can will appear personally in Court when he has been called by the appellant to appear in this appeal as party Respondent. In addition the Respondent has executed a fresh Power of attorney in favour of his wife Shamila Das dt 5/8/2014.
--- This is true to my knowledge.
- 14) That since no notice was served upon him, the respondent had no scope to appear in the lower courts and to file his. The respondent has every right to appear in this appeal when he is one of the Respondents and the instant appeal is in between the appellant and the respondent and not the Court.
--- This is true to my knowledge.
- 15) That the respondent states that when it has come to his knowledge that he has been made party to the instant appeal he has





(3)

Every right to appear and to contest the instant appeal, whatever might be his status. --- This is true to my knowledge.

16) That the Respondent no 3 states that Sharmila Das has not fabricated nor manufactured the power of attorney dt 8/2/2002, nor it was notarised in conspiracy with the Notary Public B. K. Banerjee and nor the signature of the Respondent no 3 was forged by her.
--- This is true to my knowledge.

17) That the Respondent no 2 has connivance with the appellants, as such she supported the case of the appellants, by filing application.
--- This is true to my knowledge.

18) That the Respondent no 3 has shown cogent reason and as such his show cause should be accepted and he should be given an opportunity to appear and to contest the appeal and also considering the facts and circumstances as well as legal positions and written objection of the appellants should be discarded and rejected.
--- This is true to my knowledge.

That the above statements are all true to the best of my knowledge and belief.

Sharmila Das
Signature of the Respondent.

Identified by me.

Adv.
23/3/2015



Solely affirm before me on this 23rd day of March 2015
Duly identified by
Advocate

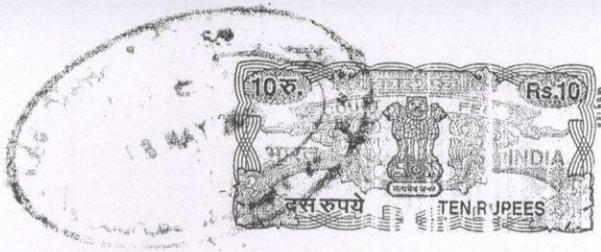
S K Das
NOTARY
(Govt of WB)
Barasat, North 24 Parganas

Checked by
Notary

23 MAR 2015

Checked by





Amit Das
[Signature]

DISTRICT :- NORTH 24 PARGANAS
IN THE COURT OF LD. 3RD ADDITIONAL DISTRICT JUDGE AT BARASAT

T.A. No. 36 / 2012

Tarun Kumar Das

..... Appellant

- VS -

Smt. Arati Das & others

..... Respondents

**The humble petition on behalf of the
Respondent No.-3 Amit Kumar Das for
vacating exparte order of hearing of
appeal.**

Most respectfully sheweth :-

1. That the Respondent No.-3 has come to know from a reliable source that a suit for declaration was initiated by the appellant against him and others being T.S. No. 205/2010 before the L.J. Civil Judge (Sr. Divn.) Second Court at Barasat which was dismissed exparte.
2. That the Respondent No.-3 has also come to know that being aggrieved at and dissatisfied with the said order, the plaintiff / appellant has also filed the instant appeal which is pending for adjudication.

Received copy
of strongly objected to
Tarun Kumar Das
18/5/15



Checked by

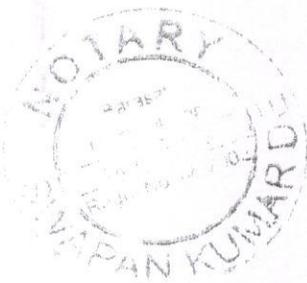




Anil Das
G. S. Das
Adv.

--: (2) :--

3. That having learnt, the Respondent No.-3 made searches of the record through Ld. Advocate and has come to know that today is poised for further hearing of the appeal.
4. That the Respondent No.-3 had no knowledge previously about the instant appeal as well the suit, so the respondent had no opportunity to take part and to file written objection in his defence.
5. That the Respondent No.-3 did not get any summons from the court of Ld. Civil Judge Sr. Divn. 2nd Court at Barasat in T.S. No. 205/2010 nor the summons of the instant appeal.
6. That the Respondent No.-3 wants to contest the instant appeal after knowledge of the same, so he should be afforded with an opportunity of being heard following the principle "**audi alterem partem**".
7. That there was no negligence or laches /fault from the part of the respondent, if he know about the institution of the instant appeal earlier he must have come earlier to contest the same, so the situation was beyond his control and knowledge which is required to be condoned by the grace of the Ld. Court.



checked by





Amit Das
for

-:: (3) ::-

8. That if the respondent No.-3 is not allowed to take part in this appeal and if the appeal is heard exparte without giving him any opportunity to argue, he would have to suffer an irreparable loss and injury which can not be compensated by any money value.
9. That the application is made bonafide and for the interest of justice.

In view of the aforesaid facts and circumstances it is humbly prayed that your Honour would graciously be pleased to pass an order vacating the exparte order of hearing of appeal by giving an opportunity to the respondent No.-3 to argue his case to meet the ends of justice.

AND

Pass such other order and/or orders as your Honour may deem fit and proper.

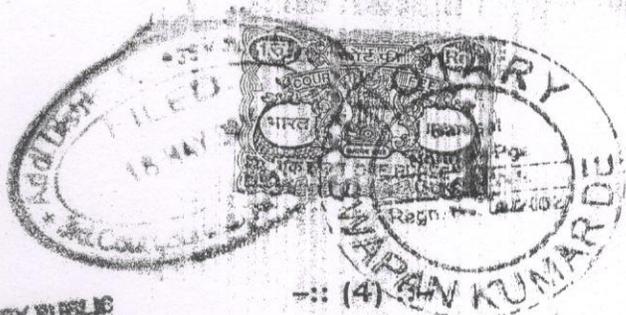
AND for such act of kindness your petitioner as in duty bound shall ever pray.

Dated The 18th day of May 2015



Checked by





BEFORE THE NOTARY PUBLIC
Barasat, North 24 Parganas

--: (4) **AFFIDAVIT** 2/1

I, Amit Kumar Das, aged about 60 years, son of Late Bishnu Pada Das, by faith- Hindu, by Occupation- Service, residing at EC-130, Salt Lake City, Sector-I, Kolkata-700064 and also at 49, Suri Lane, P.S.- Muchipara, Kolkata-700014, do hereby solemnly affirm and declare as follows :-

- (a) That I am one of the Respondents of the instant appeal and I am well conversant with the facts and circumstances of the instant application.
- (b) That the statements made in the foregoing paragraphs from para (1) to (9) are all true.
- (c) That the rest are my humble submission at the time of hearing.

That the above statements are all true to the best of my knowledge and belief.

File No. 40 2015

Amit Das

Signature of the Deponent Identified by me

[Signature]
Advocate

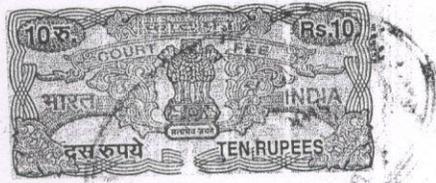
08 MAY 2015

Solemnly affirm before me on this 18th day of May 2015
Duly identified by *[Signature]* Advocate

S.K. De
NOTARY
(Gov. of W.B.)
Barasat, North 24 Parganas

18 MAY 2015
Notary Clerk





Arati Das

Arati Das

DISTRICT :- NORTH 24 PARGANAS
IN THE COURT OF LD. 3RD ADDITIONAL DISTRICT JUDGE AT BARASAT

T.A. No. 36 / 2012

Tarun Kumar Das

..... Appellant

- VS -

Smt. Arati Das & others

..... Respondents

The humble petition on behalf of
the Respondent No.-3 showing
causes.

Most respectfully sheweth :-

1. That the Respondent No.-3 has come to know from a reliable source that a suit for declaration was initiated by the appellant against him and other being T.S. No. 205/2010 before the Ld. Civil Judge (Sr. Divn.) Second Court at Barasat which was dismissed exparte.
2. That the Respondent No.-3 has also come to know that being aggrieved at and dissatisfied with the said order, the plaintiff / appellant has also filed the instant appeal which is pending for adjudication.
3. That having learnt, the Respondent

Received copy
strongly objected to
Arati Das
18/5/15





Amt 500

[Handwritten signature]

-: (2) :-

- No.-3 made searches of the record through his Ld. Advocate and has come to know that today is poised for further hearing of the appeal.
4. That the Respondent No.-3 had no knowledge previously about the instant appeal as well the suit, so the respondent ^{had} no opportunity to take part and to file written objection in his defence.
 5. That the Respondent No.-3 did not get any summons from the court of Ld. Civil Judge 3rd Divn. 2nd Court at Barasat in T.S. No. 205/2010 nor the summons of the instant appeal.
 6. That the Respondent No.-3 wants to contest the instant appeal after knowledge of the same, so he should be afforded with an opportunity of being heard following the principle "**audi alterem partem**".
 7. That there was no negligence or laches / fault from the part of the respondent, if he know about the institution of the instant appeal earlier he must have come earlier to contest the same so the situation was beyond his control and knowledge which is required to be condoned by the grace of the Ld. Court.
 8. That if the respondent No.-3 is not allowed to take part in this appeal and if the appeal is heard exparte without giving him any opportunity to argue, he would have to suffer an irreparable loss and injury which can not be compensated by any money value.





Amit Das

-: (3) :-

9. That the application is made bonafide and for the interest of justice.
10. That the causes show by the Respondent No.-3 is bonafide and can be accepted by the Ld. Court as sufficient.

In view of the aforesaid facts and circumstances it is humbly prayed that your Honour would graciously be pleased to pass an order accepting the causes shown as bonafide and convincing to meet the ends of justice.

AND

Pass such other order and/or orders as your Honour may deem fit and proper.

AND for such act of kindness your petitioner as in duty bound shall ever pray.

Dated The 18th day of May 2015

VERIFICATION

That the above statements are all true to the best of my knowledge and belief and I put my signature on this verification today at Barasat Court Premises.

Amit Das





Filed By
Tarak Mukherjee
TARAK MUKHERJEE
Advocate

DISTRICT: NORTH 24-PARGANAS

IN THE COURT OF LD. 3RD ADDITIONAL DISTRICT JUDGE
AT BARASAT

Received copy
Objected to
Barthapratim Mondal
Adv.
01.08.15

TITLE APPEAL NO. 36 OF 2012

TARUN KUMAR DAS

Appellant

-Versus-

SMT. ARATI DAS & ORS.

Respondents

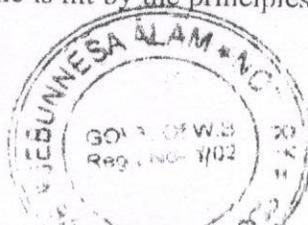
WRITTEN OBJECTION ON BEHALF OF THE APPELLANT TO THE
APPLICATION SUBMITTED ON BEHALF OF THE RESPONDENT NO. 3
FOR VACATING THE ORDER FOR EX-PARTE HEARING OF APPEAL

The humble petition of objection on behalf of
the Appellant abovesaid

Most Respectfully Sheweth:-

1. The application under reply for vacating the order fixing the appeal for ex-parte hearing, filed now by Amit Kumar Das, the respondent No. 3 is nothing but an act of fraud and the same has been taken out in a mala fide manner to deceive and defraud the appellant.

Furthermore, the same is hit by the principles of res judicata and / or principles analogous thereto.





03 AUG 2015

Filed By
TARAK MUKHI:KJFE
Advocate

I crave leave to make further submissions at the time of hearing.

2. Before dealing with the contentions / submissions in the application under reply, I humbly state and submit the following:-

a. The said Amit Kumar Das filed applications earlier to enable appearance and for vacating the order fixing appeal for ex-parte hearing.

The said applications were filed on or about 01.09.2014 through the alleged constituted Attorney under an alleged General Power of Attorney executed on 08.02.2002 in favour of his wife Sharmila Das.

b. A written objection on behalf of the appellant to the said applications was filed wherein it was inter alia stated that the purported Power of Attorney which formed the basis of the applications under reply was a manufactured one for the purpose of contesting the appeal and it was prayed that the applications be rejected with exemplary costs and proceedings initiated under Section 195 read with Section 340 of the Code of Criminal Procedure, 1973.

GOVT. OF W.B.
REGD. NO. 1012

It was also stated therein that the respondent No. 3 did not put in appearance before the Learned Trial Court having been all through represented by the respondent No. 1, since deceased,



Filed By

TARAK MUKHERJEE
Advocate

- 3 -

being his mother and constituted Attorney as he had never sought to deny the allegations in the plaint before the Learned Trial Court by submitting his written statement.

Furthermore, the respondent No. 3 had been declared insolvent by the Hon'ble High Court at Calcutta in IC No. 2 of 2003 on 07.03.2003; after such declaration of insolvency he was not entitled to contest the case which relates to immovable property not acquired by him subsequent to such declaration of insolvency, but which was immovable property interest whereof was acquired by him by virtue of hereditary succession prior to his declaration of insolvency.

- c. That the affidavit-in-opposition to the written objection filed by the appellant was affirmed under the signature of the alleged legally constituted Attorney of the respondent No. 3 but with the statement that as if the respondent No. 3 was affirming the said affidavit.
- d. The said applications of the respondent No. 3 were taken up by this Learned Court on 23.03.2015 and 17.04.2015 and ultimately by and under order No. 32 dated 17.04.2015 this Learned Court rejected the said applications.

Be it stated further that this Learned Court, while rejecting the said applications, held that the Power of Attorney dated





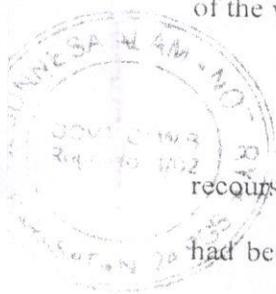
08.02.2002, on the basis of which the wife of the respondent intended to contest the appeal, stood revoked by necessary implications of law as a fresh Power of Attorney was executed in favour of the mother of respondent No. 3 and therefore, the said Power of Attorney not having any legal force, the wife of respondent No. 3 could not be permitted to contest the appeal on behalf of the respondent No. 3.

I crave leave to rely upon my reply to the application showing cause of the respondent No. 3 including the annexures thereto in support of the statements made hereinbefore and make further submissions at the time of hearing of the instant application.

3. That it is in the backdrop of the above that the applications under reply have been filed by the respondent No. 3 with affidavit under his own signature dated 18th May, 2015 the statements wherein are almost a replica of the applications filed earlier by the respondent No. 3 through his wife and purported constituted Attorney.

Hence, I repeat and reiterate my objections as made in my earlier objection save and except that relating to the alleged Power of Attorney in favour of the wife.

It is also my specific objection that the respondent No. 3 cannot take recourse to the principle of "audi alteram partem" in view of the fact that notice had been inserted in the newspapers as per direction of the Learned Trial Court







Filed By
TARAK MUKHERJEE
Advocate

below when the respondents did not enter appearance in spite of service of summons by other available mode.

4. That another interesting fact is that the respondent No. 3 has filed the application under reply for vacating the order fixing the appeal for ex-parte hearing by a supporting affidavit showing his address as:-

- i) EC-130, Salt Lake City, Sector - I, Kolkata - 700 064;
- ii) 49, Suri Lane, P.S. Muchipara, Kolkata - 700 014;

However, his residence at either of the aforesaid addresses is suspect since the envelopes addressed to him at both the aforesaid addresses have returned back to the addressee with the noting "unclaimed" for the first one and "not known" for the second one.

Hence this Ld. Court would be pleased to take appropriate judicial notice in the light of the fact that the said respondent No. 3 surfaces when he is in need of money and is otherwise untraceable thereafter thus the said respondent No. 3 has not come with clean hands before this learned court to contest the instant appeal.

It is therefore prayed that the application under reply may be rejected with exemplary costs.



Checked by



M.R. No. 3005
DATE 07 AUG 2015



AFFIDAVIT BEFORE THE NOTARY PUBLIC BARASAT, NORTH 24 PARGANAS

I, Tarun Kumar Das, son of Late Santi Ranjan Das, aged about 59 years, by faith Hindu, by occupation business, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas, do hereby solemnly affirm and say as follows :-

1. That I am the appellant in the above case and am well conversant with the facts and circumstances of the case and I am competent to file the instant affidavit.

2. That the statements made in paragraphs 1 to 4 are true to my knowledge derived from the records and / or my Ld. Advocates which I verily believe to be true.

I sign this affidavit on this the 1st day of August, 2015 at the court premises.

Tarun Kumar Das

Deponent

Prepared in my office

Jaral Mukherjee

Advocate

Identified by me

Jaral Mukherjee

Advocate

Jaral Mukherjee
Notary Public, Barasat
North 24 Pgs, REGN No- 1/02

Solemnly affirmed on 01/8/15
by the party being duly identified by
Advocate *Jaral Mukherjee*
This document contains *1* page
Pages and is checked by Notary Clerk

03 AUG 2015





Shashi Kumar Paul
For Amit Das
as his true and lawful
attorney.
Shashi Kumar Paul

District : North 24 Parganas
In the Court of Ld. 3rd Additional District Judge at Barasat.

Recd by e copy
with objection to
10/11/12
Devesh Jaiswal
Adv. 16/11/12

T.A. - 36/12.

Tarun Kr. Das.

..... **Appellant.**

- VS -

Amit Das & Others.

..... **Respondents.**

Written Objection by the Respondent No.3 Amit Das against Appellant's application for amendment of injunction application under Sec.151 of the C.P. Code.

The OP No.3 begs to state as follows :-

- (1) That the instant application is bad in law and fact, hence not tenable in the present form and nature.
- (2) That the instant application is vague, malafide, concocted and not tenable in the eye of law and the instant application deserves dismissal in limine.
- (3) That the instant application is baseless having no sanction of law, hence it should be dismissed at the very outset.
- (4) That there is no sanction of law of (amendment of plaint) in appeal who was/were not Party/Parties in the suit.
- (5) That the statements made herein are all utopian in the legal field, suppression of fact and misleading, hence it should be bade a fair go bye outrightly.
- (6) That save and except those are specifically admitted herein, all other facts, figures and contents of this application are deemed to have been categorically denied and traversed.



That the title suit arising out of which, the instant appeal has been preferred, was disposed of a long ago, so the instant application is miserably barred by law of limitation.

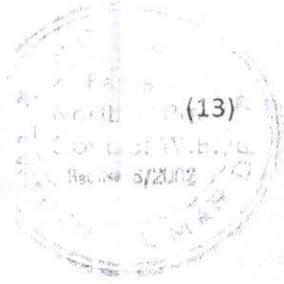
That the alleged incident as has been narrated by the appellant in the instant application did not take place during the pendency of the suit, so under what provision of law, the amendment will be effected herein is foreign to law when no specific provision has been shown.





Shanti Ranjana
For Amit Das
as his true and
lawful attorney
[Signature]

- (9) That no purpose would be served if the amendment is allowed in the appeal since the suit was dismissed ex parte on the point of law only.
- (10) That the remedy if any lies in other form, not in the form what has been sought for by the appellant, so for incurable defect the instant application is liable to be rejected.
- (11) That in reply to the averment made in Para (1), (2), (3) of instant application the Respondent states that admittedly the suit being No. 205/2010 was dismissed ex parte and appeal was preferred on 05.06.2012 and injunction has been made absolute by the Ld. Court till disposal of the instant appeal. So. How is it possible that appellant informed about order of injunction by the Ld. Court to the U.D. Dept. Govt. of West Bengal in writing on 13.09.2010, moreover, it is astonishing that how is it possible for the appellant to attend hearing on 14.09.2010 and 27.09.2010 on the basis of letter addressed to the appellant by U.D. Dept. Govt. of West Bengal dt. 22.03.2013. Certainly it is absurd and can not be taken into consideration by the Ld. Court at all, rather it would be discarded at the very threshold.
- (12) That in reply to the averment made in Para (5), (6), (7) of the instant application the Respondent states that serving of notice upon U.D. Dept. Govt. of West Bengal is not matter to be decided in the appeal nor it was in the suit, so what purpose would be served in stating so, moreover, as per the statement of the appellant Anjana Chanda and Amit Das gifted their property in the 2010 by way of Registered deed of gift to their mother Arati Das, so how the appellant says that the transfer was occurred during pendency of appeal when the appeal was preferred on 05.06.2012. The Respondent state that how the appellant knew at this stage that the U.D. Dept., Govt. of West Bengal told Arati Das that her mutation was dependent upon the result of the T.S. 205/2010 when she died a long ago and it is not possible to know for the appellant when he was on the other side of Arati Das. The Respondent further states that if any transfer is at all made by Arati Das during her life time in favour of alleged two persons who were not parties to the suit, and if the amendment is allowed/done in the instant appeal and what purpose would be served remains unanswered. The Respondent has no knowledge about the alleged transfer, so adding those persons and the amendment to introduce some alleged incidents & persons will not suffice the purpose.



That in reply to the averment made in Para 7(b) & (8) of the instant application, the Respondent states that how the prayers as sought for in Para 7(b) of the instant petition would be allowed in the instant appeal since there is no such provision. Moreover, the Respondent will be highly prejudiced if the instant application is allowed under the provision as has been sought for. The Respondent further states that the appellant has stated that no nature and character of the suit would be changed if proposed amendment is



Srinath Rajan Paul
1 For Amit Das
as his true and
lawful attorney.
Amit Das

allowed and so prayers of further declaration is sought for by the appellant by way of amendment but the suit for declaration is not allowed when the suit has been preferred basing upon an agreement and the suit No. 205/2010 had been dismissed exparte on the score that as per Sec. 34 (Proviso) and Sec 41(h) of Specific Relief Act the suit as well as injunction is barred under the law. So amendment of injunction application in the appeal would not suffice the purpose as they are not proper and necessary parties and by such means the incurable defect can not be cured/corrected as such the instant application deserves rejection as it would not help the Ld. Court in any manner to adjudicate the appeal properly.

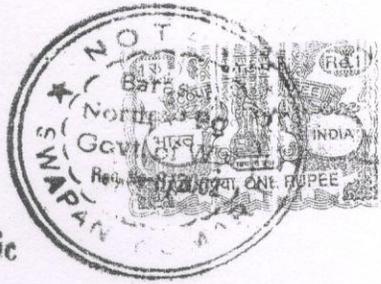
(14) That in reply to the averment made in Para (9), (10), (11) & (12) as well as prayer portion of the application of amendment of Plaint, the Respondent states that the proposed amendment will not serve any purpose and as per statement of the appellant the nature and character of the suit is not being changed, if not the suit itself is not maintainable as it is declaratory in nature and barred under the provision Sec. 34 (Proviso) and Sec. 41(h) of SR Act. The proposed amendment will not help the Ld. Court to adjudicate upon the dispute effectually rather it would be wastage of valuable time of the Ld. Court and the Respondent will be prejudiced seriously. Moreover, the suit is not alive so how the amendment will be effect therein by incorporation in something unknown to law so for the reasons aforesaid the instant application deserves merits dismissal. The Injunction application in the appeal has been disposed of finally till disposal of the appeal, so how amendment will be effected thereon. Moreover, when the suit has been dismissed exparte so how the injunction application of that suit survives and how amendment will be effected thereon is something unknown to law.

In view of the above it is therefore humbly prayed that your Honour would graciously be pleased to pass an order of rejection of the instant application for the interest of justice.





Before the Notary Public
Barasat, North 24 Parganas



AFFIDAVIT

Shanti Ranjan Paul
For Amit Das as his
true and lawful attorney.
Shanti Ranjan Paul

I, **Amit Das** aged about 62 years, S/o. Late Bishnupada Das, by faith - Hindu, by occupation - Service, resident of EC-130, Salt Lake City, Sector - I, Kolkata - 700 064 and also at Suri Lane, P.S.- Muchipara, Kolkata - 700 014 represented by his true and lawful attorney *Shanti R. Paul of CK-116*, Salt Lake City, Sector-I, Kolkata - 700 094 hereby solemnly affirm and declare as follows :-

- (1) That I am one of the Respondents of this injunction application and I am well conversant with the facts and circumstances of this appeal.
- (2) That the instant injunction application has been drafted as per my instructions and I have gone through the same.
- (3) That the contents made in the foregoing paragraph from Para (1) to Para (14) are all true to my knowledge and belief.
- (4) That the rest are my humble submission at the time of hearing.

That the above statements are all true to the best of my knowledge and belief.

Shanti Ranjan Paul

For Amit Das as
his true and lawful
attorney.

Identified by me.

Shanti Ranjan Paul
Advocate.

Sl. NO. *29*
Date *15/01/2018*

Solemnly affirmed before me
this *15th* day of *Jan* 2018
duly identified by *Shanti Ranjan Paul*
Advocate

S. K. DE
NOTARY
Govt. of (W.B.), Barasat
North 24 Pa. g. Dist.
15 JAN 2018



District : North 24 Parganas.
In the Court of Ld. 3rd Additional District Judge at Barasat.

Shanti Roychowdhury
For Amit Das as his
true and lawful attorney
Shanti Roychowdhury

T.A. - 36/12.

Tarun Kr. Das.
..... **Appellant.**

VS--

Amit Das & Others.
..... **Respondents.**

*Recd copy
withdrawing to
Dwivedi Jangul
Att. 16/12/18*

Written Objection by the Respondent No.3 Amit Das represented by his true and lawful attorney *Shanti Roychowdhury* against Appellant's application u/or 1 rule 10 read with Sec.151 of the C.P. Code.

The Respondent No.3 begs to state as follows :-

- (1) That the instant application is b.id in law and fact, hence not tenable in the present form and nature.
- (2) That the instant application is vague, malafide, concocted and not tenable in the eye of law and the instant application deserves dismissal in limine.
- (3) That the instant application is baseless having no sanction of law, hence it should be dismissed at the very outset.
- (4) That there is no sanction of law of (adding party) in appeal who was/were not Party/Parties in the suit.
- (5) That the statements made herein are all utopian in the legal field, suppression of fact and misleading, hence it should be bade a fair go bye outrightly.
- (6) That save and except those are specifically admitted herein, all other facts, figures and contents of this application are deemed to have been categorically denied and traversed.
- (7) That the title suit arising out of which, the instant appeal has been preferred, was disposed of a long ago, so the instant application is miserably barred by law of limitation.

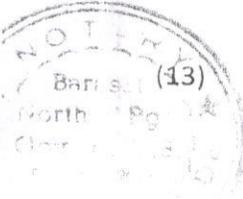
That the alleged incident as has been narrated by the appellant in the instant application did not take place during the pendency of the suit, so under what provision of law, those persons will be added herein is foreign to law when no specific provision has been shown.





Shri. K. K. Singh
For Amit Das as his
true and lawful
attorney,
Prof. K. K. Singh
Adv.

- (9) That no purpose would be served if those persons are added as party in the appeal since the suit was dismissed ex parte on the point of law only.
- (10) That the remedy if any lies in other form, not in the form what has been sought for by the appellant, so for incurable defect the instant application is liable to be rejected.
- (11) That in reply to the averment made in Para (1), (2), (3) & (4) of the instant application the Respondent states that admittedly the suit being No. 205/2010 was dismissed ex parte and an appeal was preferred on 05.06.2012 and injunction has been made absolute by the Ld. Court till disposal of the instant appeal. So. How is it possible that appellant informed about order of injunction by the Ld. Court to the U.D. Dept., Govt. of West Bengal in writing on 13.09.2010, moreover, it is astonishing that how is it possible for the appellant to attend hearing on 14.09.2010 and 27.09.2010 on the basis of letter addressed to the appellant by U.D. Dept. Govt. of West Bengal dt. 22.03.2013. Certainly it is absurd and can not be taken into consideration by the Ld. Court at all, rather it would be discarded at the very threshold.
- (12) That in reply to the averment made in Para (5), (6), (7), (8) & (9) of the instant application the Respondent states that serving of notice upon U.D. Dept. Govt. of West Bengal is not matter to be decided in the appeal nor it was in the suit, so what purpose would be served in stating so, moreover, as per the statement of the appellant Anjana Chanda and Amit Das gifted their property in the year 2010 by way of Registered deed of gift to their mother Arati Das, so how the appellant says that the transfer was occurred during pendency of appeal when the appeal was preferred on 05.06.2012. The Respondent states that how the appellant knew at this stage that the U.D. Dept., Govt. of West Bengal told Arati Das that her mutation was dependent upon the result of the T.S. 205/2010 when she died a long ago and it is not possible to know for the appellant when he was on the other side of Arati Das. The Respondent further states that if any transfer is at all made by Arati Das during her life time in favour of alleged two persons who were not parties to the suit, how they will be added as party in the instant appeal and what purpose would be served remains unanswered. The Respondent has no knowledge about the alleged transfer, so adding those persons as party will not suffice the purpose as they are neither necessary nor proper parties.



(13) That in reply to the averment made in Para (10), (11), (12) & (13) of the instant application, the Respondent states that how the prayers as sought for in Para (10) of the instant petition would be allowed in the instant appeal since there is no such provision. Moreover, the Respondent will be highly prejudiced if the instant application is allowed under the provision as has been sought for. The Respondent further states that the appellant has stated



Shanti Ranjan Paul
 For Amit Das as
 his true and lawful
 attorney.
 S.K. De
 Notary

that no nature and character of the suit would be changed if addition is allowed and so prayers of further declaration is sought for by the appellant but the suit for declaration is not allowed when the suit has been preferred basing upon an agreement and the suit No 205/2010 had been dismissed ex parte on that score that as per sec. 34 (Proviso) and Sec 41(h) of Specific Relief Act the suit as well as injunction is barred under the law. So addition of the alleged persons would not suffice the purpose as they are not proper and necessary parties and by such means the incurable defect can not be cured/corrected as such the instant application deserves rejection as it would not help the Ld. Court in any manner to adjudicate the appeal properly.

In view of the above, it is therefore humbly prayed that your Honour would graciously be pleased to pass an order of rejection of the instant application for the interest of justice.



AFFIDAVIT

**Before the Notary Public
Barasat, North 24 Parganas**

I, **Amit Das** aged about 62 years S/o. Late Bishnupada Das, by faith - Hindu, by occupation - Service, resident of EC-130, Salt Lake City, Sector - I, Kolkata - 700 064 and also at Suri Lane, P.S. - Muchipara, Kolkata - 700 014 represented by his true and lawful attorney **Santosh Das of EC-130, Salt Lake City, Sector-I, Kolkata - 700 064** do hereby solemnly affirm and declare as follows :-

- (1) That I am one of the Respondents of this appeal and I am well conversant with the facts and circumstances of this appeal.
- (2) That the instant written objection has been drafted as per my instructions and I have gone through the same.
- (3) That the contents made in the foregoing paragraph from Para (1) to Para (13) are all true to my knowledge and belief.
- (4) That the rest are my humble submission at the time of hearing.

That the above statements are all true to the best of my knowledge and belief.

Solemnly affirmed before me this 15th day of Jan 2018 duly identified by

S.K. De
Advocate

S. K. DE
NOTARY

Govt. of (W.B.), Barasat
North 24 Parganas

For Amit Das as his
true and lawful attorney.

15 JAN 2018

Identified by me

Santosh Das
Advocate.

SL NO 970
Date 15/1/2018





District : North 24 Parganas.
In the Court of Ld. 3rd Additional District Judge at Barasat.

Shanti Ranjan Paul
Fose Amit Das as his
True and lawful attorney.
[Signature]

Recd copy
acknowledged to
[Signature]
1-11/18.

T.A. – 36/12.

Tarun Kr. Das.

..... **Appellant.**

- VS -

Amit Das & Others.

..... **Respondents.**

Written Objection by the Respondent, No.3 Amit Das through his constituted attorney *[Signature]* against Appellant's application u/or 6 rule 17 read with Sec.151 of the C.P. Code.

The OP No.3 begs to state as follows :-

- (1) That the instant application is bad in law and fact, hence not tenable in the present form and nature.
- (2) That the instant application is vague, malafide, concocted and not tenable in the eye of law and the instant application deserves dismissal in limine.
- (3) That the instant application is baseless having no sanction of law, hence it should be dismissed at the very outset.
- (4) That there is no sanction of law of (amendment of plaint) in appeal who was/were not Party/Parties in the suit.
- (5) That the statements made herein are all utopian in the legal field, suppression of fact and misleading, hence it should be bade a fair go by outrightly.
- (6) That save and except those are specifically admitted herein, all other facts, figures and contents of this application are deemed to have been categorically denied and traversed.

That the title suit arising out of which, the instant appeal has been preferred, was disposed of a long ago, so the instant application is miserably barred by law of limitation.

That the alleged incident as has been narrated by the appellant in the instant application did not take place during the pendency of the suit, so under what provision of law, the amendment will be effected herein is foreign to law when no specific provision has been shown.







Shashi Kanjani
for Amit Das as
his true and lawful
attorney
By [Signature]
Adv.

(9) That no purpose would be served if the amendment is allowed in the appeal since the suit was dismissed *ex parte* on the point of law only.

(10) That the remedy if any lies in other form, not in the form what has been sought for by the appellant, so for incurable defect the instant application is liable to be rejected.

(11) That in reply to the averment made in Para (1), (2), (3) of the instant application the Respondent states that admittedly the suit being No. 205/2010 was dismissed *ex parte* and appeal was preferred on 05.06.2012 and injunction has been made absolute by the Ld. Court till disposal of the instant appeal. So. How is it possible that appellant informed about order of injunction by the Ld. Court to the U.D. Dept. Govt. of West Bengal in writing on 13.09.2010, moreover, it is astonishing that how is it possible for the appellant to attend hearing on 14.09.2010 and 27.09.2010 on the basis of letter addressed to the appellant by U.D. Dept. Govt. of West Bengal dt. 22.03.2013. Certainly it is absurd and can not be taken into consideration by the Ld. Court at all, rather it would be discarded at the very threshold.

(12) That in reply to the averment made in Para (5), (6), (7) of the instant application the Respondent states that serving of notice upon U.D. Dept. Govt. of West Bengal is not matter to be decided in the appeal nor it was in the suit, so what purpose would be served in stating so, moreover, as per the statement of the appellant Anjana Chanda and Amit Das gifted their property in the year 2010 by way of Registered deed of gift to their mother Arati Das, so how the appellant says that the transfer was occurred during pendency of appeal when the appeal was preferred on 05.06.2012. The Respondent states that how the appellant knew at this stage that the U.D. Dept., Govt. of West Bengal told Arati Das that her mutation was dependent upon the result of the T.S. 205/2010 when she died a long ago and it is not possible to know for the appellant when he was on the other side of Arati Das. The Respondent further states that if any transfer is at all made by Arati Das during her life time in favour of alleged two persons who were not parties to the suit, and if the amendment is allowed in the instant appeal what purpose would be served remains unanswered. The Respondent has no knowledge about the alleged transfer, so adding those persons and the amendment to introduce some alleged incidents & persons will not suffice the purpose and they are neither necessary nor proper parties.

(13) That in reply to the averment made in Para 7(b) & (8) of the instant application, the Respondent states that how the prayers as sought for in Para 7(b) of the instant petition would be allowed in the instant appeal since there is no such provision. Moreover, the Respondent will be highly prejudiced if the instant application is allowed under the provision as has been sought for.

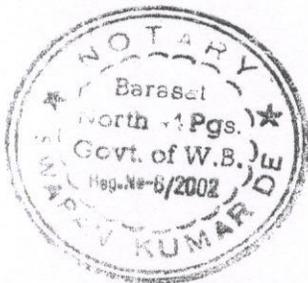


Shanti Kanyasulk
For Amit Das as his
True and lawful attorney
Roy Dasgupta

The Respondent further states that the appellant has stated that no nature and character of the suit would be changed if proposed amendment is allowed and so prayers of further declaration is sought for by the appellant by way of amendment but the suit for declaration was not allowed when the suit has been preferred basing upon an agreement and the suit No. 205/2010 had been dismissed exparte on the score that as per Sec. 34 (Proviso) and Sec 41(h) of Specific Relief Act the suit as well as injunction is barred under the law. So amendment of plaint in the appeal would not suffice the purpose as they are not proper and necessary parties and by such means the incurable defect can not be cured/corrected, as such the instant application deserves rejection as it would not help the Ld. Court in any manner to adjudicate the appeal properly.

- (14) That in reply to the averment made in Para (9), (10), (11) & (12) as well as prayer portion of the application of amendment of Plaint, the Respondent states that the proposed amendment will not serve any purpose and as per statement of the appellant the nature and character of the suit is not being changed, if not, the suit itself is not maintain as it is declaratory in nature and barred under the provision Sec. 34 (Proviso) and Sec. 41(h) of SR Act. The proposed amendment will not help the Ld. Court to adjudicate upon the dispute effectually rather it would be wastage of valuable time of the Ld. Court and the Respondent will be prejudiced seriously. Moreover, the suit is not alive so how the amendment will be effect therein by incorporation is something unknown to law, so for the reasons aforesaid the instant application deserves merits dismissal.

In view of the above it is therefore humbly prayed that your Honour would graciously be pleased to pass an order of rejection of the instant application for the interest of justice.



Checked by





Sherati Ranjan Das
For Amit Das as his true
and lawful attorney
Amrit Das
Adv.

AFFIDAVIT

Before the Notary Public
Barasat, North 24 Parganas

I, **Amit Das** aged about 62 years s/o. Late Bishnupada Das, by
faith - Hindu, by occupation - Service, resident of EC-130, Salt Lake City,
Sector - I, Kolkata - 700 064 and also at Suri Lane, P.S.- Muchipara, Kolkata -
700 014 represented by his true and lawful attorney ^{Sant. R. Das of CK-116,}
Salt Lake City, Sector-I, Kolkata - 700 064 do hereby solemnly affirm and
declare as follows :-

- (1) That I am one of the Respondents of this appeal and I am well conversant with the facts and circumstances of this appeal.
- (2) That the instant written objection has been drafted as per my instructions and I have gone through the same.
- (3) That the contents made in the foregoing paragraph from Para (1) to Para (14) are all true to my knowledge and belief.
- (4) That the rest are my humble submission at the time of hearing.

That the above statements are all true to the best of my knowledge and belief.

SL NO. *21* / 2018
Date: *15 JAN 2018*

Sherati Ranjan Das

Identified by me.

For Amit Das as his
true and lawful attorney.

[Signature]
Advocate.

Solemnly affirmed before me
this *15th* day of *JANUARY*
2018, duly identified by
[Signature] Advocate

S. K. DE
NOTARY
Govt. of (W.B.), Barasat
North 24 Parganas.

15 JAN 2018

Checked by



Compared and found to be true
copy and correctly stamped

Simo Saha 11/05/18

Comparing Clerk
District Judges Court
North 24 Parganas, Barasat

Certified to be true copy

Sudhendu Biswas
Head Copying Clerk

District Judges Civil Copying Dept
North 24 Parganas, Barasat

11/05/18