



AD-24
Ct No.16
07.01.2025
(SSS)

FAT 419 of 2024
With
CAN 1 of 2024

Ratri Seal
Vs.
The Commissioner of Police,
Detective Department,
Government of West Bengal and Ors.

Mr. Arabinda Chatterjee,
Mr. Tanmoy Mukherjee,
Ms. Kakali Ganguly,
Mr. Souvik Das,
Mr. Rudranil Das

...For the Appellant.

1. A peculiar question has arisen for consideration in the present case. The plaintiff/appellant, the sole heir and legal representative (daughter) of Late Kamaleswar Mallick alias Kamal Kumar Mallick and Late Uma Mallick, filed the suit, substantially under Sections 107 and 108 of the Indian Evidence Act, 1872, for declaration of the death of her parents as named above.
2. However, by the impugned order, the plaint has been rejected on the ground of non-compliance of Section 80 of the Code of Civil Procedure.
3. We find from the records that although it has been mentioned in the impugned order that the suit itself “is rejected”, the learned trial judge has resorted to the bar of law as contemplated in Section 80, read



with Order VII Rule 11(d), of the Code of Civil Procedure while doing so, thereby lending the dismissal the character of rejection of plaint, although the suit itself has been recorded to be rejected.

4. In any event, it transpires prima facie that the defendants in the suit are merely formal parties, being different authorities, and no relief has been sought in the suit against them, which makes it doubtful as to whether the rigours of Section 80 of the Code are attracted at all.

5. Hence, a strong prima facie case for hearing the appeal on merits has been made out.

6. In view of the limited scope of the appeal, the trial court records need not be called for.

7. The appellant shall prepare and file the requisite number of informal paper books without comparing with the records, incorporating all relevant documents, within a fortnight from date.

8. Requisites shall be put in by the appellant for service of notice of appeal on the respondents by January 10, 2025.

9. Subject to such requisites being put in and the service of notice of appeal being effected, the appeal be otherwise treated ready for hearing.



10. Liberty to the parties to mention the matter for inclusion in the list for hearing as when the appeal is made ready for hearing.

11. CAN 1 of 2024 is disposed of in the light of the above observations. There will be no order as to costs.

12. Further liberty is granted to the appellant to file the certified copy of the impugned deemed decree as and when the same is obtained by the appellant.

(Sabyasachi Bhattacharyya, J.)

(Subhendu Samanta, J.)