

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

CO/25/2026

Shri Shyam Lal Mahato and Another

Vs

Shri C. X. Wilson

Mr. Ananda Halder

... for the petitioners

July 08, 2026

[AKB]

Item No.25

1. None appears for the opposite party. Affidavit-of-service in terms of the order dated April 21, 2026 is on record.
2. This revisional application is directed against an order dated March 10, 2026 passed by the Learned Civil Judge, (Junior Division), Port Blair whereby the petitioner has been granted liberty *“to bring the name of all the legal heirs of the deceased defendant on record”*.
3. The petitioner has instituted Other Suit No. 23 of 2020 in the Court of the Learned Civil Judge (Junior Division)-I at Port Blair praying for a decree for specific performance of an agreement for sale dated July 16, 1997.
4. The said suit was initially dismissed ex-parte on January 12, 2023. The ex-parte decree was challenged in appeal before the Learned District Judge. The Appellate Court set aside the ex-parte decree and remanded the suit to the Learned Trial Court with a direction to give an opportunity to the petitioner to adduce additional evidence and thereafter to pass fresh

judgment on the basis of the material/evidence on record before the Court after remand.

5. Upon remand, the petitioner adduced further evidence. At the stage of argument, the learned Trial Court noticed that the petitioner has used the expression “*legal heirs of defendant*” in his examination-in-chief. Taking note thereof, the learned Trial Court presumed that the defendant was dead and observed as follows:

“Such legal heirs however are not impleaded in this case in place of the deceased defendant.

Accordingly, the plaintiff is hereby given liberty to bring the name of all the legal heirs of the deceased defendant on record.”

6. Feeling aggrieved thereby the petitioner has approached this Court by filing the present revisional application.

7. Mr. Halder, learned Advocate appearing for the petitioner submits that the learned Trial Court has committed a jurisdictional error in holding that the defendant has died inasmuch as it has not been mentioned anywhere in the plaint that the defendant has died and the plaintiffs’ specific prayer is for a decree directing the defendant to execute and register proper sale deed in favour of the plaintiffs. It is further submitted that there is no evidence on record to show that the defendant has died.

8. Having heard Mr. Halder, learned Advocate appearing for the petitioner and having perused the material on record, this Court is of the considered view that the learned Trial Court has committed a jurisdictional error in presuming the death of the

defendant merely because of the use of the words “*legal heirs*”. While it is true that there can be no heir of a living person yet, for a presumption of death to be drawn, the statutory evidentiary threshold of Section 111 of the Bharatiya Sakshya Adhiniyam, 2023 (which is an exception to Section 110 thereof) would be required to be crossed. It cannot be presumed merely on the basis of certain expressions used in the plaint or in the examination-in-chief, which do not indicate death with certainty.

9. On the contrary, if it can be proved that the agreement for sale was signed within a period of thirty years (which is applicable to the plaint case that alleges execution of the agreement for sale on July 16, 1997) there can be presumption of life in terms of Section 110 of the 2023 Act, unless, it is rebutted by cogent evidence and death is proved. To wit, every presumption, has to be in accordance with law.

10. In the instant case, there is nothing on record to show that the defendant has died. The plaint case does not reveal so. The relief prayed for therein is *inter alia* a decree “*directing the defendant to execute and register proper sale deed in favour of the plaintiff in respect of the suit land in view of the sale agreement dated :-16-07-1997*”.

11. Furthermore, the learned Court has proceeded with the suit till the stage of arguments upon remand on the basis of the said plaint itself. It may be remembered that a phase of *ex-parte* dismissal of the suit has been over upon the Court being satisfied about substituted service on the defendant.

12. Nothing has changed for the learned Court to suddenly draw the presumption of death of the defendant. In such view of the matter, the learned Trial Court was not justified in holding that the defendant is deceased.

13. Accordingly, the direction upon the petitioners to bring on record "*all the legal heirs of the deceased defendant*" and the preceding observation that legal heirs of the deceased defendants have not been impleaded as contained in the order impugned are set aside.

14. In any case, if it is ultimately found or proved that a decree has been passed against a dead person, law will take its own course.

15. CO/25/2026 stands disposed of without any order as to costs.

(Om Narayan Rai, J.)