**IN THE HIGH COURT AT CALCUTTA**
**CIVIL REVISIONAL JURISDICTION**
**APPELLATE SIDE**

Present:

**The Hon'ble Justice Md. Shabbar Rashidi**

**CO 4341 of 2023**

***Sahanaj Begum and Others***

***Vs.***

***Md. Sajid and Others***

***With***

**CO 115 of 2025**

***Md. Sajid @ Sajid Mohammad and Others***

***Vs.***

***Sahanaj Begum and Others***

| | | |
|---|---|---|
| For the Petitioners in *C.O. 4341 of 2023* and for the Opposite Party Nos. 1-8 in *C.O. 115 of 2025* | : | Mr. Partha Sarathi Bhattacharyya, Sr. Adv.<br>Mr. Raju Bhattacharyya, Adv. |
| For the Petitioners in *C.O. 115 of 2025* and for the respondents in *C.O. 4341 of 2023* | : | Mr. Pritam Chowdhury, Adv.<br>Mr. M. Nazar Chowdhury, Adv.<br>Mr. Farheen Riaz, Adv.<br>Mr. Yusuf Hassan, Adv. |
| Heard on | : | 21.09.2026 |
| Judgment on | : | 08.10.2026 |

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**Md. Shabbar Rashidi, J.:-**

**1.** Two revisional applications are taken up together as they emanate from the same impugned order.

**2.** The instant revisional applications are filed in assailment of the Order No. 191 dated October 11, 2023 passed by the learned Civil Judge, Senior Division, Islampur, Uttar Dinajpur in Partition Suit No. 36 of 2005.

**3.** By the impugned order the learned Civil Judge, Senior Division, allowed the petition under Section 151 of the Code of Civil Procedure filed by the defendants Nos. 35 to 38 and directed the defendants to bring an order from correct forum to enable a judicious decision to the matters as agitated by January 11, 2024.

**4.** Facts giving rise to the instant proceeding is that a suit for partition and separation of shares in respect of joint properties being Partition Suit No. 36 of 2005 was filed before the Court of the learned Civil Judge, Senior Division, Islampore, Uttar Dinajpur by Ibrahim, Kaizar Md. And Jainuddin, praying for partition of the suit property by metes and bounds and permanent injunction.

**5.** A written statement was filed on behalf of defendant Nos. 35 to 38 denying all material allegations levelled by the plaintiffs.

**6.** A judgment was passed on December 24, 2018 by the learned Civil Judge, Senior Division, Islampore, Uttar Dinajpur in Partition Suit No. 36 of 2005 that the plaintiffs have unity of title and are co-sharers in respect of the suit property but no decree of partition can be passed in favour of the plaintiffs in the absence of physical possession of the property. The suit was dismissed on contest against the defendant Nos. 1 to 11, 13 and 15 to 21 and 35 to 38 and exparte against the rest of the defendants.

**7.** Being aggrieved by the judgment and order, the petitioners preferred an appeal being F.A.T. No. 346 of 2019 before a Division Bench of this Hon'ble Court. The said appeal was allowed by setting aside the finding of the learned trial court. It was held that issue Nos. 5 and 6 decided by the learned trial court cannot be sustained and that the parties are co-sharers in respect of a joint property and the matter was remitted back to the learned trial court for determining the shares on the basis of such findings and observation was made by the Hon'ble Division Bench that the learned trial Judge would pass a preliminary decree on the basis of findings recorded in issues Nos. 3 and 4 within four weeks from the date of communication of the order.

**8.** It was argued by the learned advocate for the plaintiffs that the issue with regard to right and title of the parties over the suit

properties was decided by the learned trial court and subsequently affirmed in the appeal. Such issue cannot be allowed to be reopened in the name of discovery of new facts. It was submitted that the scope of the suit post remand was limited to determination of respective shares of the parties to be declared in the form of a preliminary decree. To such proposition, learned advocate for the plaintiff relied upon ***2026 SCC OnLine Del 5420 (Brij Lal & Sons v. Delhi Development Authority)***, ***(2001) 3 Supreme Court Cases 1 (Bipin Shantilas Panchal v. State of Gujrat and Another)*** and ***2008 SCC OnLine 1017 (Hemendra Rasiklal Ghia v. Subodh Mody)***.

**9.** Learned advocate for the plaintiffs further submitted that the death certificate of Dilbahar was duly proved at the trial. The defendants neither challenged such document at the time of trial nor there was any cross examination on the part of the defendants touching upon its genuineness. The defendants cannot challenge the same at a subsequent time. In support of his contention, learned advocate for the plaintiff placed reliance upon ***(2003) 8 Supreme Court Cases 752 (R.V.E. Vendatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Another)***.

**10.** On the other hand, learned senior advocate for the defendant submitted that by producing the alleged death certificate of Dilbahar,

the plaintiff has practiced fraud upon the learned trial court. He further submits that an objection with regard to fraud can be raised at any time. Even a stale challenge alleging fraud is required to be adjudicated. In support of his contention, learned senior advocate relied upon ***(1994) 1 Supreme Court Cases 1 (S.P. Cheengalvaraya Naidu v. Jagannath and Others)*** and ***(2005) 4 Supreme Court Cases 605 (MCD v. State of Delhi and Another)***.

**11.** Learned senior advocate for the defendants also submitted that the learned trial court had ample powers under Section 151 of the Civil Procedure Code, 1908 to decide the issue raised before it which the learned court, by the impugned order, erroneously relegated the defendants to bring an order from the appropriate forum.

**12.** The suit property as delineated in the schedule of the plaint was originally owned by Dilbahar, Ful Md., Nanadamoi Bibi, Sk. Soleman and Sk. Meherdi.

**13.** The case made out by the plaintiffs was that the plaintiffs had inherited the suit property from Dilbahar and the contention of the defendants was that Dilbahar had transferred his entire shares in the suit property by dint of two Deeds of Conveyance to some of his co-sharers and some outsiders in the year 1972.

**14.** The defendants further contended that the plaintiffs being the heirs of Dilbahar had no interest left, over any portion of the suit property and so the defendants prayed for dismissal of the suit.

**15.** The petitioners stated that issues were framed, evidences were adduced by the parties to the suit, the original death certificate of Dilbahar, the predecessor-in-interest of the plaintiffs in the suit were marked as exhibit 2 filed by the plaintiffs, suggesting that Dilbahar had died on 17.07.1968 at the age of 82 years.

**16.** The petitioners state that defendant Nos. 36 to 38 in Partition Suit No. 36 of 2005 had filed an application dated 31.03.2022 under Section 151 of the Code of Civil Procedure before the learned trial court alleging that the plaintiffs have fraudulently tried to establish before the learned trial court that the Registered Deeds Nos. 9917 dated 10.06.1969, 6173 dated 29.04.1972 and Registered Deed dated 04.07.1972 by which the entire share of the suit property of Dilbahar was transferred in favour of different purchasers are fraudulent, the executant being dead on the date of execution of the said deeds. However, the death certificate produced in original by the plaintiffs and marked as exhibit 2, suggests that Dilbahar had died on 17.07.1968 at the age of 82 years, such being the case, purported deeds dated

10.06.1969 and 29.04.1972 so exhibited by the defendants could not have been executed by a dead person.

**17.** The learned trial court while deciding issues Nos. 3 and 4 came to a conclusion that, since the original death certificate of Dilbahar was admitted in evidence without any objection from the defendants, so the death of Dilbahar could be taken as 17.07.1968 and when the executor of the deeds was dead at the time of execution then the irresistible conclusion was that the deeds dated 10.06.1969 and 29.04.1972 were void and not binding on the plaintiffs and so the plaintiffs and the defendants were co-sharers in respect of the suit property having unity of possession among themselves.

**18.** While deciding issues Nos. 5 and 6, the learned trial court in the judgment dated December 24, 2018, passed in Partition Suit No. 36 of 2005 observed that although the plaintiffs have unity of title and are co-sharers in respect of the suit property but in absence of physical possession of the property, no decree of partition can be passed in their favour.

**19.** Being aggrieved by the judgment and order, the petitioners preferred an appeal being F.A.T. No. 346 of 2019 before a Division Bench of this Hon'ble Court. By an order dated October 8, 2021, the learned Division Bench decided the appeal on issue Nos. 3 and 4 and 5

and 6. The appeal being F.A.T. No. 346 of 2019 was allowed by the learned Division Bench by setting aside the finding of the learned trial court. It was held that issue Nos. 5 and 6 decided by the learned trial court cannot be sustained and that the parties are co-sharers in respect of a joint property and the matter was remitted back to the learned trial court for determining the shares on the basis of such findings. An observation was made by the Hon'ble Division Bench that the learned trial Judge would pass a preliminary decree on the basis of findings recorded in issues Nos. 3 and 4 within four weeks from the date of communication of the order dated October 8, 2021.

**20.** The defendant Nos. 36 to 38 in Partition Suit No. 36 of 2005 had filed an application dated 31.03.2022 under Section 151 of the Code of Civil Procedure before the learned trial court by which it was contended that in between the judgment and decree of dismissal dated December 12, 2018, and the order of remand dated October 8, 2021, passed by the Hon'ble Division Bench of this High Court, defendant Nos. 36 to 38 have discovered such documents which would show that the plaintiffs have fraudulently tried to establish before the learned trial court that the Registered Deeds Nos. 9917 dated 10.06.1969, 6173 dated 29.04.1972 and Registered Deed dated 04.07.1972 by which the entire share of the suit property of Dilbahar was transferred

in favour of different purchasers are fraudulent, the executant being dead on the date of execution of the said deeds.

**21.** The defendants further contended in their application that the entire exercise adopted by the plaintiffs was fraud as the document discovered and certified copy obtained on 19.01.2022 by the defendant No. 37 being the Deed No. 19202 dated 30.10.1968, shows that the wife of the executants of the Exhibit No. A, A/1, A/2 transferred lands to one Mossammat, Teghni Nissa wherein, the executant was described as the wife of Dilbahar, who was then shown, as alive and present, and that the thumb impression of Samiran Nissa (wife of Dilbahar), on such deed stood identified by her husband Dilbahar.

**22.** The defendants further contended that Exhibit A/1 also contained signature of the son of the executants who was the plaintiff in the said suit being Partition Suit No. 36 of 2005. Therefore the defendant Nos. 36 to 38 had prayed for amendment of their written statement to introduce the plea of fraud and sought to lead evidence to bring on record the Deed No. 19202 dated 30.10.1968 on the framing of specific issue of fraud.

**23.** In deciding the Partition Suit No. 36 of 2005, the learned trial court had framed various issues. For proper appreciation, the issues framed in the suit are set out herein. Such issues were:

1. *Whether the suit is maintainable in its present form and prayer ?*
2. *Whether the plaintiffs have any cause of action to file the suit ?*
3. *Whether the plaintiffs and the defendants are co-sharers in respect of the schedule suit property ?*
4. *Whether there is any unity of title and possession amongst the parties in respect of the suit property ?*
5. *Whether the plaintiffs are entitled to get any preliminary decree as prayed for ?*
6. *Whether the plaintiffs are entitled to get any other relief as prayed for ?*

*Decision of the learned trial court on issue nos. 3 to 6 is germane for consideration in the present proceeding.*

**24.** Issue nos. 3 and 4 were taken up together by the learned trial court. The learned court decided such issues holding that the plaintiffs and defendants were co-sharers in respect of the suit property and they had unity of title and possession amongst themselves. Similarly, issue nos. 5 and 6 were decided together. Such issues were decided to the following terms, that's to say:

> *"In the instant suit under discussion, the plaintiffs admitted in evidence that they are dispossessed from the*

*suit property prior to filing of the suit. The plaintiffs are admittedly out of position then the natural course of the suit would have been claim for the possession along with division of shares. The plaintiffs by simply filing a partition suit without any consequential relief of possession has let themselves hit by the provisio of Section 34 where the declaration of shares would be impaired without proper consequential relief. It may be argued that the plaintiffs should get the chance of amending the prayer for seeking proper relief. It is not a case where the plaintiffs are not sure of the physical possession or where the court concluded on the basis of evidence about the possession of the plaintiff but rather it is a clear-cut admonition of PW 1 that they are not in possession of the property for a long time and even after having knowledge of such fact refrained from seeking appropriate relief from the court.*

*Therefore, considering all the aspects, I am of the opinion that although the plaintiffs have unity of title and are co-sharers in respect of the suit property but in absence of physical possession of the property, no decree of partition can be passed in their favour.*

*Accordingly, the issues are answered in the negative."*

Consequently, the suit being Partition Suit No. 36 of 2005 was dismissed.

***25.*** We have noted hereinbefore that assailing the judgment and decree passed in Partition Suit No. 36 of 2005, an appeal was carried

to this Hon'ble Court vide FAT 346 of 2019 which was disposed of by an order passed on October 8, 2021. The said order reads as follows:

> *"We listed the matter today without adhering to the rules applicable for preparation of an appeal for final disposal as the point involved in the instant appeal appears to us a pure question of law, which does not require a roving enquiry into the facts nor the evidence. We decided to dispense with all such formalities and invite the respective Counsel to address us on a pivotal point emerged in the instant appeal.*
>
> *Before we proceed to formulate the points, it would be apposite to adumbrate the salient facts which are more or less undisputed and discernible from the impugned judgment.*
>
> *The plaintiffs/appellants filed a suit for partition and separation of shares in respect of the joint properties. The defendants/respondents appeared and took defence that the plaintiffs have no right, title and interest of the joint property having divested by the predecessors. It was further contended that there is an anomaly in the death certificate relied in the matter. The Trial Court, after considering the documentary as well as the oral evidence adduced by the respective parties, categorically decided issue nos. 3 and 4 that deeds allegedly executed by the predecessor is void, having seen the light of the day after his death. The Court further held that the plaintiffs/defendants are the co-sharers in respect of the*

*suit property and there is a unity of possession among themselves.*

*However, the issue nos. 5 and 6 took a front seat, leading to the dismissal of the suit taking shelter to Section 34 of the Specific Relief Act. The Trial Court held that since the plaintiffs are admittedly out of possession prior to the institution of the suit, the suit is bad under Section 34 of the Specific Relief Act, if the consequential relief pertaining to the recovery of possession is not prayed for in the suit.*

*On the conspectus of the aforesaid undisputed facts, the seminal point involved in the instant appeal pertains to the applicability to Section 34 of the Specific Relief Act in conjunction with the specific findings, returned while answering the issue nos. 3 and 4, where the Trial Court has held that the parties are co-sharers and there is a unity of possession amongst themselves.*

*There is no ambiguity in our mind that the learned Judge in the Trial Court has misconstrued and under the misconception of the law, held that the suit for partition simplicitor is bad and not maintainable unless the relief in the form of possession is prayed for.*

*The fundamental principles underlining the concept of partition leaves no room that the possession of a co-sharer in the joint property is a possession on the basis of the share held by him and on behalf of the other co-sharers, unless there is a specific case of ouster being made out.*

*We do not find any case of ouster having made out in the written statement as it proceeded simplicitor on an assertion that the predecessors of the plaintiffs, divested the right, title and interest in respect of the joint property by executing several deeds. The possession may be important in other suits than the partition suit. The unique feature of the partition suit is that there is no concept of plaintiff and defendant as each party is a plaintiff defending and asserting his share in the property. The moment, the Court decided the important issue and held that there is a unity of possession amongst the parties, the question of recovery of possession automatically gets obliterated and a person who is in possession is not required to claim a specific relief in this regard. Even, otherwise, once the property is declared to be a joint property of the parties to the suit, the possession is irrelevant as such possession is in-built and in-heard in the jointness and cannot be divorced or segregated by claiming a specific relief.*

*Fundamentally, the moment the shares are declared in the preliminary decree at the time of passing the final decree, making the allotment, apropos the shares declared therein, any co sharer who occupies the portion, thereof, in excess of the share, is required to give up such possession.*

*Section 34 of the Specific Relief Act does not envisage such aspect but its applicability is restricted to a case, where mere declaration without the consequential relief would render the decree, unworkable and/or inexecutable.*

*In such perspective, Section 34 has to be seen and, therefore, in our opinion, applicability of such provision in a suit for partition is misplaced and there has been an apparent misconception of the legislative intent underlining the incorporation of such provision in the statute book.*

*Had it been a case, a person has filed a suit for declaration without a further consequential relief relating to the recovery of possession and in the event, it is found during the trial that the plaintiff is out of possession, the rigor of Section 34 may be attracted. However, in case of a partition suit, the unity of possession, which is of varied form, cannot be projected as a deterrent to the plaintiff in claiming a separation of share in terms of the shares declared in the preliminary decree. The possession may be actual, physical, constructive, symbolical and depends upon the facts of each case.*

*We do not delve to go deep into such aspect in determining the nature of such possession for the simple reason that the Trial Court has already held that there is a unity of possession among the parties and the moment, such possession is found, which may be constructive or symbolical, there is no need for a separate prayer for recovery of possession, solely on such ground. We do not find that the issue nos. 5 and 6 decided by the Trial Court can be sustained. Such findings are hereby set aside.*

*Since the Trial Court has held that the parties are co-sharers in respect of a joint property, the matter is remitted*

*back to the Trial Court for determining the share on the basis of such finding.*

*We expect that the Learned Judge in the Trial Court would pass a preliminary decree on the basis of the findings recorded in issue nos. 3 and 4 within four weeks from the date of communication of the order in presence of the parties or their respective counsels.*

*The appeal being FAT 346 of 2019 is allowed."*

**25.** It is explicit from the order passed in FAT 346 of 2019 that the findings of the learned trial court in respect of issue nos. 3 and 4 in the suit were upheld. The learned Appellate Court interfered with the findings in relation to issue nos. 5 and 6 where the learned trial court refused to grant preliminary decree in favour of plaintiffs on the touchstone of Section 34 of Specific Relief Act, 1963. The learned Appellate Court specifically laid down that Section 34 was not applicable in a partition suit. On such determination, the Division Bench directed the learned trial court to pass a preliminary decree on the basis of the findings recorded in issue nos. 3 and 4. Therefore, the suit was remanded to learned trial court only with regard to determination of shares on the basis of its findings in respect of issue nos. 3 and 4.

**26.** A case has been made out on behalf of the defendants that the plaintiffs in the title suit practiced fraud by producing the death certificate of the original owner of the suit properties namely Dilbahar. It was also contended that fraud can be pleaded at time and that fraud vitiates everything. In ***S.P. Chengalvaraya Naidu*** (supra), it was observed by the Hon'ble Supreme Court that,

> *"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."*

**27.** ***MCD*** (supra) was rendered in a situation when vital documents are withheld. It laid down that a litigant who approaches the court is bound to produce all documents which are relevant to the litigation. There is no such situation obtaining in the facts of the present case.

**28.** However, in the instant case, such death certificate was proved at the trial without any objection from the side of the defendants. Not only that, this issue of alleged fraud was raised during trial of the partition suit and was extensively considered by the learned trial court. The Learned trial court, while deciding issue nos. 3 and 4 noted that,

> *"In this suit, the defendants are claiming that Dilbahar transferred his entire interest in the property by different deeds in the year 1969 and 1972. By producing the principal evidence of the original registered deeds, they have discharged their onus and I am in a position to say that the registered deeds are real as they are apparent pictures of transfer made by Dilbahar. There is no question of the transferable interest of Dilbahar as the title of Dilbahar in respect of the suit property is admitted position in the suit. When the defendants have produced the original deeds and when this is the apparent state of affair then the onus of proof swiftly shifts to the shoulder of the plaintiffs*

*to show before the Court that the apparent is not the real state of affair.*

*In order to discharge such onus, the plaintiffs relied on the death certificate of Dilbahar from which it appears that Dilbahar died at an age of 82 years and his date of death is 17.07.1968. If Dilbahar died on 17.07.1968 then automatically any deed allegedly executed by him in the year 1969 or 1972 becomes questionable before the Court. During argument of the suit, Ld. Advocate for the defendants harped time and again that the death certificate of Dilbahar as produced by the plaintiffs is a fictitious and manufactured document on the ground that if Dilbahar died in the year 1968 and if the Registration of Births and Deaths Act came in the year 1969 then how the death was registered in terms of appropriate rules.*

*It appears from the death certificate (Exbt.2) that such certificate was issued on 06.03.1972 much before the filing of the suit. It further appears from the record that the second deed executed by Dilbahar on 29.04.1972 i.e., even after the issuance of the death certificate.*

*It is not the law as envisaged in the Registration of Births and Deaths Act, 1969 that any birth or death that took place prior to the promulgation of the Act cannot be subsequently registered. On the contrary, it is mandate of the law that even for births and deaths that has happened prior to the Act can be registered by applying Section 13 of the Act or the other rules framed under the Act. Thus, I find no force in the argument of defence that if the death took*

*place in the year 1968 then how it can be registered by under an Act which came into force in the year 1969.*

*It may be a question that date of death is altered by the intending parties in order to gain some proprietary rights and there is some mal practice in getting the death certificate. This probability would have been a possibility if the death certificate of Dilbahar was obtained by the plaintiffs either prior to filing of the suit or much later then his actual date of death. The probability of manufactured death certificate is automatically nullified when the death certificate was obtained in the year 1972 i.e., around 33 years before the suit was filed. It is not expected that the plaintiffs will take the certificate in the year 1972 with the anticipation that perhaps the defendants would file one suit after almost 3 or 4 decades against them. Moreover, the only questions that were put to PW1, who produced the original death certificate, as to when he obtained the certificate or whether any document was submitted to prove the actual date of death before the concerned officer prior to issuance of the certificate. Apart from these two questions, no other questions were put to the witness to test the veracity or authenticity of such certificate. The defendants did not even care to suggest that the certificate is manufactured for the purpose of the case nor any objection was given by the defendants at the time when the certificate was admitted in evidence. Again PW2 came before the Court and stated that the plaintiffs are cultivating the suit land after death of their father. During cross examination the witness was questioned by the*

*defendants as to when Dilbahar died to which he gave a specific answer that Dilbahar died around 40 years ago but the defendants in spite of eliciting such positive answer have not denied the statement by way of any suggestion. In other words, it can be said that the death of Dilbahar which is suggested by the witness is admitted by the defendants.*

*Now, if the certificate was admitted in evidence without any objection from the quarter of the defendants then the date of death of Dilbahar can be taken as 17.07.1968. There can not be any juvenile discussion regarding legality of the deed allegedly executed by a person who is proved to be dead at the time of its execution. When the vendor is proved to be dead at the time of execution of the deed of 1969 and 1972 then the irresistible conclusion is that deed No. 9917 dated 10.06.1969 and 6173 dated 29.04.1972 are void and not binding upon the plaintiffs."*

**29.** In ***Brij Lal and Sons*** (supra), the Delhi High Court noted that,

*"17. Nor can the Applicant invoke the inherent jurisdiction of this Court under Section 151 of the Code to overcome the absence of jurisdiction. It is settled that the inherent powers preserved under Section 151 CPC are intended to supplement the procedure prescribed by the Code and cannot be exercised contrary to its express provisions or to confer a jurisdiction which the Court otherwise does not possess. Equally, those powers cannot be invoked to circumvent the doctrine of finality or to secure,*

*under the guise of a miscellaneous application, a rehearing of issues already decided.*

*18. Viewed as a whole, the present proceedings are nothing but an attempt to reopen concluded adjudications by adopting the form of a miscellaneous application. If such a course were permitted, any unsuccessful litigant could bypass the statutory framework governing appeals and review proceedings by repeatedly filing miscellaneous applications seeking substantially the same reliefs. Such a course is clearly impermissible. What cannot be achieved directly cannot be permitted to be accomplished indirectly."*

**30.** In ***R.V.E. Venkatachala Gounder*** (supra), the Hon'ble Supreme Court was of the view that the omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. In the case at hand, as noted above, Exhibit 2, the death certificate of Dilbahar was admitted in evidence without any objection from the defendant's side.

**31.** In ***Bipin Shantilal Panchal*** (supra), the Hon'ble Supreme Court laid down that,

*"14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a*

*note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)*

*15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.*

**32.** In that view of the facts, since the Partition Suit was remanded to the learned trial with directions which was limited to the

determination of shares on the basis of its findings on issue nos. 3 and 4, it was not open to the learned trial court to allow introduction of further evidence which shall have direct bearing on its findings on issue nos. 3 and 4, which was not interfered by the Appellate Court. The prayers in the petition so filed on behalf of the defendants, which resulted in the impugned order, has the effect of de novo trial of the Partition Suit, which was not directed by the learned Appellate Court. Such an order passed by the learned trial court cannot be sustained. The impugned order is also not tenable in so far as it relegates the defendants to obtain an order from appropriate forum for judicious decision. The learned trial court was competent enough to decide on the issue before it.

**33.** Accordingly, on the basis of discussions made hereinabove, the impugned order is hereby set aside. Learned trial court shall proceed to act in strict compliance of the order passed in FAT 346 of 2019 in accordance with law.

**34.** Consequently, both the Civil Order applications under Article 227 of the Constitution of India being **C.O. 4341 of 2023** and **C.O. 115 of 2025** are accordingly disposed of.

**35.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

**[MD. SHABBAR RASHIDI, J.]**