

O.S Case No. 01/2024.

**Present :- Smt. Mandakranta Saha,
Additional District Judge,
2nd Court, Cooch Behar**

Order No. 14, dtd. 15.12.2025 :-

Today is fixed for appearance of the parties, further hearing and order.

Heard both sides at length with regard to the application dtd. 15.01.2024. The petitioner has sought for permission to deposit sum of Rs.3000/- as directed by the Ld. Civil Judge (Sr. Divn)Sadar in Misc Case No. 04 of 2016 arising out of Misc. Probate Case No. 22 of 2008.

On scrutiny of the order no.41 dtd. 24.02.2020 passed in Misc Case No. 04 of 2016 it is found that the present petitioner brought an application u/o-9 rule 13 CPC seeking setting aside of the probate granted by the Ld. District Delegate in Misc. Probate Case No. 22 of 2008. It is further transpired from the record of Misc. Case No. 04 of 2016 that the Ld. District Delegate had entertained the application u/o 9 rule 13 CPC in contentious manner, recorded evidence adduced by both sides. Thereafter on contested hearing allowed the application u/o-9 rule 13 CPC subject to payment of cost of Rs.3000/-.

Now the petitioner of the Misc. Case No. 04 of 2016 intends to deposit of sum of Rs.3000/- as directed by the Ld. District Delegate.

In this factual aspect it is necessary to refer the section 263 of Indian Succession Act which lays down that grant of probate or letter of administration may be revoked or annulled on various grounds enumerated therein.

Again section 265 of the Indian Succession Act clearly lays down that District Delegate has jurisdiction to deal with non contentious cases. In other words a district delegate is empowered to grant probate or letter of administration in non contentious cases. This provision of law clearly rules out the jurisdiction of district delegate to hear and revoke grant of probate in a contentious case. According to section 266 of Indian Succession Act District Judges have exclusive jurisdiction in granting or revoking probate or letter of administration in all cases within the district.

Thus, the District Judges are authorized to grant or revoke probate or letter of administration in all contentious cases whereas district delegates are authorized to grant of probate or letter of administration only in non contentious cases.

In view of such legal and factual aspects it would be relevant to refer the judgment of High Court Calcutta passed in F.A 302 of 2014 dtd. 09.07.2015 in a case between Sara Moiz Khyrullah .. Vs... Dilip Kr. Singh. In this judgment the division bench of High Court Calcutta has been pleased to observe that an application u/s-9 rule 13 CPC for revocation of grant of probate in contentious form is not maintainable before the District Delegate. The aggrieved has such remedy before the District Judge. If the proceeding u/s 9 rule 13 CPC become contentious, such proceeding cannot be considered by the District Delegate as the District Delegate has not been conferred with any jurisdiction to deal with any contentious case in connection with probate proceeding. The remedy available to aggrieved party is that he may apply before appropriate forum seeking revocation of grant of probate.

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The discussions made above clearly enunciate that District Delegate Cooch Behar have had no jurisdiction to hear and decide the application u/o 9 rule 13 CPC vide Misc. Case No.04 of 2016. Consequently the order no.41 dtd. 24.02.2020 allowing the said application u/o 9 rule 13 CPC with cost of Rs.3000/- after contested hearing is contrary to law and therefore such order has no legal force at all to be implemented. In other words, the entire proceeding including order no.41 dtd. 24.02.2020 passed in Misc. Case No.04 of 2016 are null and void as the same is against or contrary to the provisions of Indian Succession Act 1925, as discussed above. Thus no permission can be granted to the petitioner to deposit cost of Rs.4000/- vide order no.41 dtd. 24.02.2020 passed in Misc. Case No.04 of 2016 by Ld District Delegate.

Hence, the application dtd. 15.01.2024 for payment of cost of Rs.3000/- stands rejected.

The petitioner is directed to file requisite for issuance of notice with regard to the revocation proceeding relating to grant of probate by District Delegate in Misc. Probate Case No. 22 of 2008 by 21.01.2026.

Dictated & Corrected,

Additional District Judge,
2nd Court, Cooch Behar

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2nd Court, Cooch Behar
JO Code No. : WB00825