

Order No.66

Date: 24.09.2024

The record is put up for order.

It appears on the record that the application u/Order 22 Rule 10 of CPC was taken up for hearing on 10.09.2024 and both sides were heard at length and today it is taken up for order.

This petition is filed by one Samir Sen with the prayer for recording the death of Sudharani Sen, the applicant on record and the name of the petitioner be incorporated as the applicant in the present case.

Caveator in this case has filed written objection to the said petition by denying and disputing all the allegations made therein and inter alia stated that there cannot be any assignment, creation or devolution of interest in the said property exclusively to the petitioner, exclusion of the objector after revocation of the Letters of Administration granted by this Court on 26.05.1994 and if the leave is granted to the petitioner u/Order 22 Rule 10 of CPC, it tantamounts to prejudge the matter.

Ld. Advocate appearing for the petitioner submitted that the petitioner is one of the beneficiary in the said will and he is praying for leave to continue the instant proceedings on the death of his mother who was the original applicant in the application granting for Letters on Administration and it is prayed to pass necessary order.

On the other hand, Ld. Advocate appearing for the caveator submitted that the petitioner is entitled to be substituted u/Order 22 Rule 3 of CPC and not being a beneficiary of the will and it is prayed to reject the petition.

Before dealing with the petition, it requires to discuss the backdrop of this case. The present L A case was filed by one Sudharani Sen, the mother of the applicant praying for letters of administration on the will of late Annapurna Sen and the same was disposed by ex-parte Order No. 17 dtd. 25.09.1994, granting letters of administration on the will dtd.17.08.1973.

The present caveator filed a Misc. Case being No. 7194/2008 against the present applicant for revocation of said letters of administration and the said Misc. Case was dismissed by Order dtd. 29.03.2018 passed by the Ld. Chief Judge, City Civil Court, Calcutta and the caveator has preferred an appeal being FMAT No. 244 of 2018 before the Hon'ble High Court which was disposed of by order dtd. 27.04.2022 and the Hon'ble Court has been pleased to set aside the order dtd. 23.02.2018 and the said letter of administration was revoked and the present L A case was revived.

It is the case of the caveator that the original petitioner namely Sudharani Sen died on 06.09.2003 after the said L A case was disposed of and the need of substitution was necessitated when the L A case was revived by Order dtd. 27.04.2022 passed by the Hon'ble Court and the limitation for substitution started running from the said date and the present petition is not maintainable and the petition ought to have been made u/Order 22 Rule 3 of CPC which is barred by limitation and the instant suit cannot be proceeded without setting aside the abatement u/Order 22 Rule 9 of CPC.

On perusal of the photocopy of the subject will, it appears that Sudharani Sen and the applicant Samir Sen are the beneficiary in the said will and under the provision of Indian Succession Act beneficiary has the right to apply for granting letters of administration on a will and said Sudharani Sen applied for letters of administration as she was one of the beneficiary of the said will and the instant proceeding was revived by order dtd. 27.04.2022 i.e, after the death of said Sudharani Sen and the instant application has been made for leave to continue the proceedings being the beneficiary of the said will and not being heirs or successors of said Sudharani Sen and therefore, the present application u/Order 22 Rule 10 of CPC is maintainable and I do not find any impediment in allowing the same.

Hence, it is

Ordered

That the petition u/Order 22 Rule 10 of CPC is allowed on contest and leave is granted to the present applicant namely Samir Sen to continue the proceedings.

To 26.11.2024 for P-Hearing.

D/C by me


Judge, Bench-V
City Civil Court, Calcutta


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City Civil Court, Calcutta