

O.S. 4 of 2018
CIS Registration No.4 of 2018

In the Court of Additional District & Sessions Judge,
2nd Court, Sealdah, South 24 Parganas

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Present: Sri Abir Chatterjee, Additional Dist. & Sess. Judge.
Judicial Officer's Code : WB00833

Order Number 41 dated 29.02.2024

Parties file hazira.

Case record is taken up for order in respect of the petition under Order 1 rule 10 of CPC filed on behalf of Rajeshwar Shaw.

This is a suit for grant of probate as a contentious case in respect of the last will of deceased testator Sailesh Kumar Chakraborty.

The will appears to have been executed and registered by the testator on 07.09.1987 and he expired on 07.04.1996. That the application for grant of probate was filed before the court of District Delegate at Sealdah on 05.03.2016 and after the same was rendered contentious the matter was refiled on 05.04.2018. The parties to the litigation is Ranjit Kumar Dey who was said to be an executor of the will and Bimalendu Chakraborty, son of the testator was arrayed as defendant/objector.

The applicant Rajeswar Shaw who seeks to be impleaded as a party to the proceeding is neither an executor nor a beneficiary of the will said to have been executed by Sailesh Kumar Chakraborty.

During the course of hearing it was submitted and documents were filed to the effect that Sailesh Kumar Chakraborty had revoked the will by executing a deed of revocation executed on 24.02.1992. The said deed of revocation was duly registered in the office of A.D.S.R., Sealdah.

Further case of the applicant is that Sailesh Kumar Chakraborty had further executed a deed of declaration and revocation registered in the office of A.D.S.R. Sealdah being no.12 of 1994 reaffirming such revocation and declaring the property to be heritable.

It was submitted that after the death of Sailesh Kumar Chakraborty on 07.04.1996 the property was inherited by his wife Pratima Chakraborty and son Bimalendu Chakraborty. After the death of Pratima Chakraborty, Bimalendu Chakraborty became the only legal heir and absolute owner of the property.

Thereafter Bimalendu Chakraborty as vendor entered into a development-cum-joint venture agreement vide a registered instrument dated 22.12.2016 and

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further executed a power of attorney duly registered appointing Rajeswar Shaw(the petitioner herein) and others as lawful attorney to execute works as per development agreement. That Bimalendu Chakraborty received Rs.12,00,000/- as security deposit for the development agreement.

It was alleged that in view of the revocation of the will there is no scope at all to grant probate of the said will of Sailesh Kumar Chakraborty. It was stated that both the parties are hand in glove with the intention to obtain probate of the will.

That parties in this proceeding have unholy nexus for which this petitioner seeks to be added as a party to the proceeding to protect his own interest.

During the course of hearing Ld. Advocate for the petitioner placed reliance on the case of Baijnath and another vs. Smt. Ganga Devi and another reported in AIR 1998 Raj 125, Indian Associates vs. Shivendra Bahadur Singh and Others AIR 2003 Del 292, Abdul Jaleel and Others vs. Smt. Aishabi and Others AIR 1992 Kant 380 and Syed Ahmed Pasha vs. Garlapati Jaihinder Reddy (2018) 1 ALT 270.

Objecting to the said application Ld. Advocate for the petitioner submitted that Bimalendu Chakraborty during his lifetime had filed a suit against the present applicant vide T.S. 260 of 2019 seeking cancellation or revocation of the agreement and power of attorney dated 22.12.2016 the said proceeding is still pending. That all the parties to the development agreement or all the power of attorney holders are not party to the application. It was pointed out that probate court works on the limited sphere to answer the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of last execution the testator had some disposition of mind. It was further stated that present petitioner had filed the W.S. in the suit but without any counter claim. It was further stated that the petitioner is deliberately avoiding the suit. He has no locustandi to be a party in this proceeding and the petition should be rejected outright. Reliance was placed on the decision reported in AIR 2001 Bom 377, AIR 2005 Kant 136, AIR 2005 Del 379 and AIR 2007 (NOC) Gau 1932.

The scope before the court while considering the proceeding under order 1 rule 10 of CPC is well settled and further exemplified in the cases of AIR 1998 Raj 125, Indian Associates vs. Shivendra Bahadur Singh and Others AIR 1992 Kant 380 and Syed Ahmed Pasha vs. Garlapati Jaihinder Reddy (2018) 1 ALT 270.

It is also well settled that probate court cannot decide title of property while

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granting probate which is well reiterated in the case of decision reported in AIR 2001 Bom 377, AIR 2005 Kant 136, AIR 2005 Del 379 and AIR 2007 (NOC) Gau 1932.

While granting probate what the court consider is that the will produce before it is the genuine and last will of the testator or not and whether at the time of last execution the testator had sound disposing mind. Even the probate court have no power to go into the question of existence of property or the extent of the property sought to be bequeathed.

On question whether a third party can be an intervener in a contentious probate proceeding has been considered by Hon'ble Delhi High Court in the case of Indian Associates vs. Shivendra Bahadur Singh and Others AIR 2003 Del 292 relying upon the well settled case of Sima Rani Mohanti vs. Puspa Rani Pal, AIR 1978 Cal 140 had observed that **“however slight and even the bare possibility of an interest is sufficient to entitle a party to oppose a testamentary paper.”**

Apex Court in **Smt. Rukmani Devi v. NarendraLal Gupta, A.I.R. 1984 SC 1866** where their lordships have opined as follows:--

".....It is well-settled that the decision of the probate court is a judgment in rem. The High Court rightly held that till the order granting probate remains in force it is conclusive as to the execution and validity of the Patna High Court FA No.102 of 2019 dt. 11-07-2022 will till the grant of probate is revoked. Apart from the fact that a decision of the probate court would be a judgment in rem not only binding on the parties to the probate proceedings but it will be binding on the whole world..”

In the backdrop of the pronouncement by the Apex Court and Hon'ble High Court at Calcutta it will appear that The probate court has been granted unfettered discretion under section 283 of the Act to issue notice while granting probate calling all persons claiming to have interest in the estate of the deceased to come and see the proceeding, of course, before the grant of probate. However, the very purpose of such notice is to watch the proceedings either by filing objection or to support the proceedings.

In case in hand, the intervener holds a business interest in the property by dint of a development agreement executed by Bimalendu Chakraborty in the property bequeathed through will of Sailesh Kumar Chakraborty. If the will of Sailesh Kumar Chakraborty which was allegedly rescinded but receives the seal of the probate court it may jeopardise the entire development agreement and interest of the intervenor.

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Hence intervenor Rajeshwar Shaw holds significant interest in the property for which he is entitled to object.

Accordingly, the petition under Order 1 Rule 10(2) of Cr.P.C. filed by Rajeshwar Shaw stands allowed. The petitioner be added as defendant no.2 in this proceeding.

The added defendant Rajeshwar Shaw to file written statement within 90 days of being served with copy of W.S. The petitioner to file amended copy of the plaint / probate application by **14.05.2024** and also to serve copy thereof upon Rajeshwar Shaw.

Dict. & Corr. by me,

Sd/- (A. Chatterjee)
Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.

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Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.