

Order No.6
22-02-2019:

The plaintiff files hazira. Today is fixed for exparte hearing of this suit.

The plaintiff files the affidavit-in-chief of one Sarbani Dass nee Paul and Somnath Paul. Let the same be kept with the record.

At this stage, the defendant no.1 files her Written Statement. But there is no prayer for vacating the order of exparte hearing filed by the defendant no.1. When this matter was brought to the notice of the Ld. Counsel for the defendant no.1, he expressed his inability to file such application on the pretext of absence of the defendant no.1 in the city at present. No application has also been filed on behalf of the defendant no.1 to accept the WS filed by her.

In such a situation, the WS filed by the defendant no.1 cannot be accepted and let the same be kept with the record.

The suit is taken up for exparte hearing. But at this stage it is found that an application filed by the plaintiff u/s 247 of the Indian Succession Act has not yet been disposed off. Accordingly, the record is taken up for hearing of the said application.

Ld. Advocate for the plaintiff submits that one Shambhu Nath Paul had expired on 28-02-2001 leaving behind the plaintiff and the defendants as his legal heirs. The said Shamhu Nath Paul had, during his lifetime, executed a Will dated 11-07-1991 and the plaintiff is the sole beneficiary under the said Will. One Manju Paul and the defendant no.1 was appointed as the executrixes under the said Will but before Manju Paul could make any application for obtaining the Probate of the Will she has expired and the defendant no.1, being the other executrix is also reluctant to obtain the Probate of the said Will. In such a situation, the plaintiff had been compelled to institute the present suit for grant of Letters of Administration in his favour. It is the further submission of the Ld, Counsel for the plaintiff that the deceased Shambhu Nath Paul had inducted two tenants namely – Bank of Baroda, Beliaghata Branch and CESC Limited in the property situated at 20, Hem Chandra Naskar Road, PS Beliaghata, Kolkata – 10 but due to the pendency of the legal dispute between the plaintiff and the defendant no.1 in respect of the Will of the said Shambhu Nath Paul and the objection taken by the defendant no.1 with the tenants in respect of realization of rents for the said property by the plaintiff; the plaintiff is not in a position to realize the monthly rents from the said tenants and is suffering huge financial loss in maintenance of the entire building and as such the plaintiff has preferred the instant application for his appointment as administrator pendente lite till the disposal of the suit.

Considering the submissions of the Ld. Counsel for the plaintiff and the materials on record, it prima facie appears that the plaintiff is the sole beneficiary under the Will in question in respect of the property covered by the said Will. It is also found that the defendant no.2 and 3 have accorded their consent to the grant of Letters of Administration in favour of the plaintiff in respect of the Will in question and apart from being the legal heirs of Late Shambu Nath Paul, they two are also one of the three attesting witnesses to the said Will in question. It is also found that the defendant no.1, who is said to be the objector, regarding the grant of Letters of Administration in favour of the plaintiff is the other attesting witness to the Will in question and the suit is running exparte against her. In such a situation, it appears that the plaintiff has a very good case to succeed in this suit and as such there is no legal impediment for appointment of the plaintiff as the Administrator Pendente lite in respect of the Will in question.

The application of the plaintiff has sufficient merit and calls for a favourable response,

Hence, it is

ORDERED

That the application u/s 247 of the Indian Succession Act filed by the plaintiff is hereby allowed exparte but without any order as to costs. The plaintiff is hereby appointed as the Administrator Pendente lite till the disposal of this suit in respect of the last Will of Late Shambu Nath Paul and is hereby authorized by this Court to collect and realize the rents, both current and arrears, from the two tenants namely – CESC Limited and Bank of Baroda, Beliaghata Branch, in respect of their occupation of the tenanted portion in 20, Hem Chandra Naskar Road, PS Beliaghata, Kolkata – 10 till the disposal of the instant suit. The plaintiff shall open a Savings Account in his name with any nationalized Bank for this purpose and the rents should be deposited directly to the said account by the said tenants through NEFT or paid directly to the plaintiff through Cheques or Demand Draft and the plaintiff will be bound to deposit the said instruments in the said Savings Account for their encashment. The plaintiff shall be entitled to utilize the amount lying with the said Savings Account for the purpose of payment of taxes for the property situated at 20, Hem Chandra Naskar Road, PS Beliaghata, Kolkata – 10. The said amount may also be utilized for regular maintenance of the said building to the extent of Rs. 10,000,00 per month and in case of any maintenance or repairing works costing more than Rs. 10,000,00 per month, prior sanction of this Court is to be taken before making the expenses from the said account. The plaintiff will tender monthly statement of accounts in respect of the said Savings Account before this Court on regular basis till the disposal of this suit. All expenses made from the said account should be supported by proper voucher and the copy of the said voucher should be deposited before this Court along with the said Statement of Accounts.

To 25-03-2019 for exparte hearing of the suit.

D/C:

ADJ, FTC-II, Sealdah

ADJ, FTC-II, Sealdah