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IN THE HIGH COURT AT CALCUTTA
Testamentary & Intestate Jurisdiction
ORIGINAL SIDE

IA No. GA/8/2023

In TS/12/2015

IN THE GOODS OF:
SUNIL KUMAR BANERJEE, (DECEASED)

-AND-

SHEKHAR NATH MUKHERJEE

-VS-

SMT. PADMA BANERJEE AND ORS.

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Hearing Concluded On : 22.09.2023

Order On : 29.09.2023

Appearance:

Mr. Uday Narayan Betal, Adv.

Mr. Sourojit Dasgupta, Adv.
Ms. Amrita Panja Moulick, Adv.

ORDER

1. The petitioner Arijit Banerjee, son of late Sunil Kumar Banerjee has filed the present application being GA 8 of 2023 praying for an order be passed

renouncing the sole surviving executrix-ship of Ms. Swagata Mukherjee, daughter of late Shekhar Nath Mukherjee as appointed under the last Will and Testament dated 17th December, 2011 and also prayed for converting the present proceeding for grant of probate to grant of Letters of Administration with respect of the said Will. The petitioner also prayed for substituting the petitioner as plaintiff in place of the deceased plaintiff/executor.

- 2.** The testator, Sunil Kumar Banerjee had executed his last Will and Testament dated 17th December, 2011 by appointing his nephew (sister's son) Sri Shekhar Nath Mukherjee failing which his daughter Ms. Swagata Mukherjee to be the Executor/Executrix of his last Will and Testament. The testator, Sunil Kumar Banerjee died on 25th November, 2013. After the death of the testator, the executor Shekhar Nath Mukherjee has filed an application being PLA 276 of 2014 for grant of probate of the last Will and Testament dated 17th December, 2011. As the legal heirs of the testator have filed caveat as well as affidavit in support of their caveat, accordingly, the PLA was converted to testamentary suit. During the pendency of the suit being TS 12 of 2015, the executor Shri Shekhar Nath Mukherjee who was the plaintiff in the suit has died intestate on 19th October, 2014.
- 3.** After the death of the executor Shekhar Nath Mukherjee, the surviving executrix namely Ms. Swagata Mukhejee has not come forward to

discharge her duty of executrix-ship or has not renounced the executrix-ship, accordingly, the petitioner being one of the heirs of the testator and one of the beneficiary under the last Will and Testament dated 17th December, 2011 has filed an application being GA 7 of 2021 for issuance of special citation upon the sole surviving executrix namely, Ms. Swagata Mukherjee. In the meantime, the wife of the testator Smt. Padma Banerjee has also expired on 4th March, 2020.

4. By an order dated 21st January, 2022 in GA No. 7 of 2021, notice dated 15th February, 2022 has been served upon the executrix on 18th March, 2022 but inspite of receipt of the notice, the executrix has not renounced her executrix-ship and also failed to accept the executrix-ship within the prescribed time as provided under law.
5. Mr. Uday Narayan Betal, Learned Advocate representing the petitioner submitted that the sole surviving executrix namely Ms. Swagata Muherjee appointed in the Will by the testator has not renounced her executrix-ship and failed to accept executrix-ship even after service of notices upon her thus the petitioner being one of the sons of the testator and beneficiary under the said Will may be allowed to prove the Will dated 17th December, 2011 by converting the present probate proceeding into Letters of Administration.
6. Mr. Betal relied upon the following decision in support of his submissions:

- i. *2004 0 Supreme (Cal) 646 (Subhro Kamal Mukherjee, Sudip Mukherjee –vs- State).*
- ii. *2013 0 Supreme (Bom) 1893 (Shirin Baman Faramarzi of Bombay Zoroastrian Iranian Inhabitant –vs- Zubin Boman Faramarzi of Bombay Ubduab Inhabitant & Ors.).*
- iii. *2023 0 Supreme (Bom) 502 (Kunjumon Shivarajan Panicker (since deceased) Deepika S. Panicker & Ors. –vs- Chandravadan Pranlal Doshi & Ors.).*
- iv. *2003 0 Supreme (Jhk) 194, 2003 1 JCR 618 (Jharkhand High Court –vs- Susanta Kumar Das).*

7. In the present case, the testator has appointed Shri Shekhar Nath Mukherjee as executor failing which Ms. Swagata Mukherjee as executrix. After the death of testator, Shekhar Nath Mukherjee filed an application for grant of probate but unfortunately the executor passed away before grant of probate and after the death of the executor, Ms. Swagata Mukherjee, the executrix inspite of the service of notices upon her has not renounced her executrix-ship and failed to accept the executrix-ship. The petitioner herein is admittedly beneficiary under the Will and as such he is entitled to be substituted as plaintiff in place of the executor and the proceeding to be converted from grant of probate to grant of Letters of Administration.

8. In view of the above, prayers (a), (b), (c), (d), (e), (f) and (g) of the Master's Summons is allowed.

9. GA No. 8 of 2023 is thus disposed of.

(KRISHNA RAO, J.)

p.d/-