

December 2009. The present Petitioners have filed a caveat in that petition along with an affidavit in support, whereupon the petition filed by the Respondents herein has been converted into a testamentary suit. The Petitioners are now desirous to setting up of the will of 22 January 2003 as the only genuine last will and testament of the deceased. It is their case that the Respondents herein being the executors of that will, the Petitioners cannot claim representation to the estate unless the Respondents are removed as executors.

3 The proper remedy for the Petitioners is to seek letters of administration with the will (will dated 22 January 2003) annexed. That the Respondents themselves are executors of the will of 22 January 2003 presents no difficulty. If the Respondents as executors either renounce or fail to accept the office of the executor within the time provided for such acceptance, the will may very well be proved and letters of administration with a copy of the will annexed may be granted to the Petitioners, both as persons entitled to administration upon intestacy and beneficiaries under the last will and testament dated 22 January 2003.

4 Learned Counsel for the Respondents relies on a judgment of Calcutta High Court in the case of **Sm. Sailabala Dasi Vs. Baidya Nath Rakshit**¹. Relying on this judgment, it is submitted that mere disputing of the will by an executor does not result into renunciation of executorship on the part of the executor; it is no ground for refusal to grant probate to such executor when later such executor asks for it. Learned Counsel submits that the Respondents, as executors of the first will (i.e. the will dated 22

1 Vol.XXXII The Calcutta Weekly Notes 729

January 2003) have neither renounced the will nor refused to accept executorship thereunder. Learned Counsel submits that the Respondents as executors are duty-bound in law to propound the later will of the deceased. Whilst that is so, at the same time, so far as the will of 22 January 2003 is concerned, the Respondents, as executors of that will, are obviously refusing to propound that will, thereby impliedly refusing to accept executorship under that will. If that is so, Sections 231 and 232 of the Indian Succession Act specifically empower persons such as the Respondents herein to prove that will and seek letters of administration with a copy of the will annexed. That really would be a proper remedy to adopt so far as the present Petitioners are concerned and not the misc. petition taken out herein.

5 The misc. petition is, accordingly, disposed of with liberty to the Petitioners to file an application for letters of administration with a copy of the will dated 22 January 2003 annexed. Such application would be on the footing that the executors under the will have renounced or refused or failed to accept executorship thereunder within the time fixed for acceptance.

(S.C. GUPTE, J.)