

C.O. 3750 of 2018

Debasish Banerjee
-Vs-
Purnima Banerjee & Ors.

Mr. Amit Kumar Pan,
Mr. Saunak Bhattacharya.
...for the petitioner.

Mr. Rwitendra Banerjee,
Mr. Biswajit Chatterjee.
.....for the objector/ opposite party.

Mr. Mrinal Kanti Ghosh.
.....for the added opposite party.

Certified copy of the Order No. 25 dated July 21, 2017 passed in O.S. No. 09 of 2015 by the 2nd Court of learned Additional District Judge at Barasat filed on behalf of the petitioner be kept with the record.

The petitioner is the named executor of the alleged Will and Testament of one Krishna Kanta Banerjee.

The petitioner after the death of the said testator applied for grant of probate of the said Will registered before the learned District Delegate at Barasat, District 24-Parganas (North) being Misc. Case No. 332 of 2013 (probate).

The cause become contentious at the instance of the opposite party no.1, as such, the learned District Delegate by the Order No. 7 dated January 16, 2015 sent the records of the said case to the learned District Judge at Barasat, District- 24 Parganas (North) along with the original Will for necessary order.

The learned District Judge in turn sent the records of the said case to the 2nd Court of the learned Additional District Judge at Barasat for disposal. The said case was registered before the said Court as O.S No. 09 of 2015.

July 21, 2017 was a date fixed before the said 2nd Court of learned Additional District Judge at Barasat in the said O.S No. 09 of 2015.

On the said date, the objector, the opposite party no. 1 herein, neither appeared nor filed her written objection to the application for grant.

The said 2nd Court of learned Additional District Judge for such failure of the said objector treated the cause as non-contentious one and vide Order No.25 dated July 21, 2017 sent the records of the said case back to the Court of learned District Delegate.

The learned District Delegate by the Order no. 14 dated April 11, 2018 sent the said case again to the learned District Judge at Barasat, District-24 Parganas(North) for necessary order.

The petitioner is aggrieved by both the aforesaid orders.

Mr. Rwitendra Banerjee appears on behalf of objector/opposite party no. 1 and submits that his client is very much willing to contest the prayer of the petitioner for grant of probate of the said Will.

The 2nd Court of learned Additional District Judge has committed a serious jurisdictional error in sending the records of the case to the Court of learned District Delegate treating the cause as non-

contentious one as non-appearance of the party objecting the grant or non-filing of written objection to the application for grant may entail some other consequences but such defaults do not alter the character of the proceeding.

This Court is informed by the learned counsel for the parties that the said case now has been transferred to the 3rd Court of learned Additional District Judge at Barasat, District -24 Parganas (North) for disposal and has been renumbered as O.S No. 38 of 2018.

In view of transfer of the said case to a new Court challenge to the aforementioned orders has become infructuous.

C.O. 3750 of 2018 is disposed of with the above observations. No order as to costs.

Learned Registrar (Judicial) shall communicate a copy of this order to the learned District Judge at Barasat, District -24 Parganas (North) and to the 2nd Court of learned Additional District Judge at Barasat, District -24 Parganas (North).

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)