

22.11.2021
Item No.07
Court No.18
AJ.

C.O. 995 of 2021

Samir Halder
-Vs-
Promila Halder & Anr.

Mr. Biswarup Biswas,
Ms. Atreyee De Ganguly.
...for the petitioner.

Mr. Kaushik Dey,
Mr. Debdipto Banerjee.
.....for the opposite parties.

The revisional application under Article 227 of the Constitution of India is directed against Order No. 13 dated March 10, 2021 passed by the Additional District Judge, Fast Track Court – (I) at Sealdah in Revocation Case No. 1 of 2019.

The petitioner of the present revisional application being the named executor applied for grant of probate of the alleged last Will and Testament of his uncle named Gobardhan Halder.

The learned District Delegate, Sealdah by the Order No. 10 dated August 29, 2018 granted probate of the said will on the said application of the petitioner.

The opposite party nos. 1 and 2, the widow and one of the sons of the brother of the testator applied for revocation of the said grant being Revocation Case No. 1 of 2019 *inter alia* on the grounds that the said grant was obtained by practicing fraud.

The petitioner filed an application in the said revocation case questioning its maintainability alleging that the said opposite parties having no caveatable interest, cannot maintain the said revocation case. The learned Trial Judge, by the order impugned has dismissed the said application.

Mr. Biswas, learned counsel appearing on behalf of the petitioner submits that the widow of the testator was cited but she did not raise any objection to the grant, the opposite parties of the said application being Class-II heirs of the testator cannot have any caveatable interest in the estate of the deceased, as such, cannot maintain the application for revocation of the grant of said probate.

In reply, Mr. Dey, learned counsel appearing on behalf of the opposite parties submits that his clients are seeking revocation of the said grant on the ground of fraud, as such, at this stage, the revocation case cannot held to be not maintainable without investigating the said issue.

Heard learned counsel for the parties, perused the materials-on-record.

It appears from record that at the time of grant of probate of the said will, the widow of the testator was alive but it is not clear whether

citation was issued to her or not. The stand of the widow of the testator in respect of the grant of the said probate is also not clear. Moreover whether the applicants of the said revocation case have any chance to succeed the estate of the deceased in case of intestacy is also required to be decided on trial.

The maintainability of the said revocation case under these facts and circumstances cannot be decided at this stage.

No doubt, whether the opposite parties can maintain the said application for revocation of the said grant is a vital issue but to be decided in the said revocation case in course of trial.

C.O. 995 of 2021 is disposed of with a request to the learned Trial Judge to decide the aforesaid issue along with the other issues to be framed in the said revocation case.

In view of the fact that the grant was made on August 29, 2018, the learned Trial Judge is requested to expedite the disposal of the said revocation case.

There shall be no order as to costs.

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.)