

AD. 90.
August 10, 2021.
MNS.

C. O. No. 1366 of 2004
with
CAN 1 of 2007(CAN 1538 of 2007)
+
CAN 2 of 2011(CAN 7770 of 2011)
+
CAN 3 of 2011(CAN 7771 of 2011)
(Via video conference)

Sri Chittaranjan Biswas
Vs.
Sri Sudarshan Biswas and others

Mr. Nilanjan Bhattacharjee,
Mr. Arpan Guha

... for the petitioner.

Mr. Pinaki Ranjan Mitra

...for the opposite parties.

The petitioner has challenged an order of the revisional court, affirming an order dated April 22, 2003 passed by the Civil Judge (Junior Division), Howrah in Title Suit No. 271 of 1988, whereby the petitioner's application for being added as a party to the suit was rejected.

The petitioner claimed interest in the suit property in the capacity of the executor of a Will left by the deceased plaintiff no. 1. Both the courts below were of the opinion that, prior to grant of probate, the executor has no right to represent the testator.

Learned counsel for the opposite parties contends that, since two other plaintiffs were already on record and the interest to sue survived on them, there is no question of adding any third party to the suit.

However, it is clear from the records that a Will was executed in favour of the petitioner and probate of the same was not granted at least at the juncture when the impugned order was passed. (It is submitted by learned counsel for the opposite parties that probate has not been granted till date.)

Be that as it may, it is well-settled that the executor of a Will has the right to represent the estate of the testator even before grant of probate for the purpose of any litigation. That apart, although both the other two plaintiffs have a right to espouse their causes in the suit, the estate of the deceased plaintiff no. 1, under the circumstances, can only be represented by the executor of his Will.

Hence, both the courts below acted without jurisdiction in rejecting the petitioner's application for being added as a plaintiff to the suit.

Accordingly, C. O. No. 1366 of 2004, along with all connected applications, are allowed, thereby setting aside order No. 8 dated March 16, 2004 passed by the District Judge at Howrah in Civil Revision No. 72 of 2003, thereby affirming the order dated April 22, 2003 passed by the Civil Judge (Junior Division), Howrah, in Title Suit No. 271 of 1988.

The petitioner is hereby added as a plaintiff in the suit. Liberty is given to the parties to amend the cause title of the plaint accordingly or get it done through the concerned department of the trial court upon proper application.

Since the suit is pending for an inordinately long period due to pendency of this revisional application, the trial court is requested to dispose of the same as expeditiously as possible, preferably within one year from the date of communication of this order to the court below.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)