

07.01.2021

BP
Sl. 7

C.O. 3198 of 2018

(Via Video Conference)

Sitaram Sahu

Vs.

Usha Shaw

Mr. Ziaul Islam

..for the petitioner.

Mr. Gopal Chandra Ghosh

..for the opposite party.

The opposite party in a revocation case arising out of a probate proceeding has filed the application under Article 227 of the Constitution of India challenging the order being No. 29 dated June 15, 2018 passed by the learned Additional District Judge, 7th Court at Barasat in Misc. Case No. 200 of 2015.

By the impugned order the application for amendment of the petition for revocation of grant of probate filed by the opposite party herein was allowed.

Mr. Ziaul Islam, learned advocate appearing for the petitioner submits that the opposite party herein, by way of amendment of the application for revocation of grant of probate, has sought to introduce some dates which will alter the cause of action as well as the nature and character of the revocation application.

Mr. Gopal Chandra Ghosh, learned advocate appearing for the opposite parties submits that the application for amendment was filed to correct certain typographical errors in the original application for revocation of grant of probate. He submits that the amendment application will not change the nature and character of the revocation application.

I have heard the learned advocates for the respective parties and have considered the materials on record.

It appears from the amendment application that the opposite parties herein by way of amendment wanted to insert the date of death of Hazarilal Shaw and Lakhinarayan Shaw by way of amendment. The date of death of Hazarilal Shaw as mentioned in paragraph 13 of the original application for revocation was also sought to be corrected. Typographical errors can be corrected by way of amendment as rightly held by the learned Judge of the court below. With regard to point no. (iv) of the amendment application, the opposite parties herein wanted to incorporate in the pleading that being the legal heirs of Hazarilal Shaw, since deceased they have caveatable interest over the deceased. Such amendment relates to elaboration of the cause of action already pleaded in the original application.

In my view, the proposed amendments are formal and do not change the nature and character of the application for revocation of the grant of probate. The question as to whether the opposite parties herein have caveatable interest in the property shall be decided at the time of hearing of the petition for revocation of the grant of probate. The proposed amendments are also necessary for the purpose of deciding the disputes involved between the parties.

The learned Trial Judge assigned cogent reasons while allowing the application for amendment. The impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

C.O. 3198 of 2018 is accordingly dismissed without, however, any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given on priority basis.

(Hiranmay Bhattacharyya, J.)

