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Ct. No. 18  
02.02.2021

**C.O. No. 3089 of 2017  
(Via Video Conference)**

**Sri Krishna Murari Tibrewal  
Vs.  
Ananad Kumar Tebriwal & Ors.**

Mr. Partha Pratim Roy ... For the petitioner.

Mr. Kaushik Dey,  
Ms. Aishwarya Jayshree ... For the O.P. No. 1.

The present application under Article 227 of the Constitution of India is directed against Order no. 54 dated May 31, 2017 passed by the 2<sup>nd</sup> Court of learned Additional District Judge, at Siliguri District. Darjeeling in O.C. (Probate) Case No. 11 of 2010.

The opposite party no. 1(since deceased) is the named executor of the alleged Will jointly executed by his parents. The said opposite party after the death of his parents applied for grant of probate of the said Will and on an objection being raised to the said grant by the petitioner, who happens to be the brother of the said opposite party no. 1, the cause became contentious, giving rise to the aforementioned probate suit.

The opposite party no. 1 has died during the pendency of the revisional application as such his

heirs and legal representatives, the opposite parties herein have been substituted in the present matter.

The petitioner in the said suit filed an application for appointment of a handwriting expert to compare the alleged signature of the testator and testatrix appearing in the said Will with that of their alleged signatures appearing in two documents, *viz.* a cheque and in a statement regarding settlement of account.

The learned trial Judge by the order impugned has dismissed the said application on the ground that the alleged signatures of the testator and the testatrix appearing in those documents are not their admitted signatures, as such in absence of such admitted signatures the appointment of handwriting expert for the purpose as sought for is not warranted.

Mr. Partha Pratim Roy learned advocate appearing on behalf of the petitioner submits that availability of the admitted signature is not the sole criteria for appointment of handwriting expert to ascertain the genuinity of the disputed signature, such exercise can be conducted on the basis of proved signature. According to him the nature of the documents produced by the petitioner for the purpose of said comparison signifies the genuinity of those signatures.

It is rightly submitted by Mr. Roy that the signature proved to be genuine can be compared with the disputed signature even when the admitted signature

is not available. In the present case neither the admitted nor the proved signatures of the testator and the testatrix are available and in the absence of such signature the learned trial Judge is absolutely justified in dismissing the application filed by the petitioner for appointment of handwriting expert.

The order impugned for the aforesaid reason does not call for any interference.

C.O. 3089 of 2017 fails.

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.)