

IA NO. GA/4/2020
IN CS/120/2010
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

RAJ KUMARI VERMA @ BHAMA @ SONI
VERSUS
SAMPAT DEVI KULTHIA & ANR.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 11th February, 2021.

(Via Video Conference)

Appearance:
Mr. K.C. Garga, Adv.

Ms. Noelle Banerjee, Adv.
Mr. Dipak Dey, Adv.

The Court: By this application, the defendants in a suit for partition, seeks dismissal of the suit and the Receiver appointed in the suit to be discharged.

Learned advocate appearing for the defendant submits that, the property involved in the suit for partition were subject matter of two Wills of two persons. In one case, the probate was granted in the other, Letters of Administration was granted. She submits that, the plaintiff herein contested the grant of the probate and the letters of administration. The plaintiff was un-successful. She relies upon 1985 Volumn 1, Supreme Court Cases 144 in support of the contention that, the judgment and order of the probate Court is binding. She submits that,

the devolution of the properties which are the subject matter of the present suit are governed by the two Wills probate and Letters of Administration of which were granted. Consequently, the Court need not be troubled with the present suit for partition. The subsequent events of grant of probate and Letters of Administration be noticed by the Court and that the suit be disposed of since, the plaintiff cannot claim partition of the suit properties in view of the probate and the Letters of Administration granted.

Learned advocate appearing for the defendant submits that, there is a Receiver appointed in the suit, who should be discharged.

Learned advocate appearing for the plaintiff draws the attention of the Court to the schedule of the properties sought to be partitioned in the suit. He submits that so far as serial no.6 is concerned the same is not governed by any of the Wills of which probate and Letters of Administration were granted. So far as Receiver is concerned, he contends that, no Receiver was appointed.

The plaintiff herein, filed a suit for partition. In the suit the plaintiff tabulated six properties for partition. Six properties in the schedule of the plaint involves both immovable as well as movables.

The plaintiff claims partition of the property of Budhmal Kulthia since deceased. In other words, the suit for partition involves partition of the estate of the Budhmal Kulthia since deceased. Budhmal Kulthia since deceased left behind his last will and testament dated October 26, 2002. On an application for grant of Letters of Administration, such Letters of Administration was granted in respect of such Will on December 3, 2018. The wife of late Budhmal Kulthia since deceased, left behind her Will and testament dated January 31, 2008. On

an application for grant of probate, the same was granted on September 21, 2017. The properties involved in the suit are governed by the two Wills of which Letters of Administration and probate granted as noted above.

The plaintiff contested the grant of the Letters of Administration and of the Probate. The plaintiff was unsuccessful therein.

In view of the properties, both movables and immovable being subject matter of the two Wills, the devolution of such properties would be governed by the provisions of the two Wills as noted above. Therefore, this Court need not embark upon the exercise for partition of such properties.

Smt. Rukmani Devi and Others (Supra) is of the view that, so long an order granting probate remains in force it is conclusive as to the execution and validity of the Will till the grant of probate is revoked.

In such circumstances, it would be appropriate to grant orders in terms of prayer (a) of the Master Summons dated November 19, 2020.

Apparently, a Receiver was appointed by an order dated August 3, 2010. Such Receiver stands discharged. In the event the Receiver is in symbolic possession of any property involved in the suit, with his discharge such symbolic possession will revert back to the parties in accordance with the Probate and the Letters of Administration.

IA No. GA 4 of 2020 in Partition and Administration Suit No. 120 of 2010 and Partition and Administration Suit No. 120 of 2010 are disposed of accordingly.

(DEBANGSU BASAK, J.)