

06.12.2022

Sl no. 119

Ct no. 652

P.M.

CO 232 OF 2017

Smt. Keka Set & Anr.

- Vs -

Smt. Kabita Set

Mr. B. Ghoshal,
Mr. R.K. Sardar

.... For the petitioners.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Raju Bhattacharyya,
Mr. Mahim Sasmal

.... for the opposite party

Being aggrieved by the order dated 22.12.2016 passed by learned Additional District Judge, 1st Court, Barrackpore in connection with Misc. Appeal No. 87 of 2014, present application under Article 227 of the Constitution of India has been preferred.

Petitioner No. 1 states that she filed an application for succession certificate being case No. 39 of 2008 before the learned District Delegate at Barrackpore which was allowed by the said Court and succession certificate was granted.

Petitioner alleged that opposite party No. 1 and 2 falsely claiming to be the wife and daughter of husband of petitioner No. 1 namely Alope Kumar Set filed an application for setting aside the alleged ex-parte order of granting succession certificate under Order IX Rule 13 read with Section 141 and 151 the code of civil procedure and also filed an application

under Section 383 of the Indian Succession Act for revocation of order of granting succession certificate being Misc. Case No. 36 of 2010 before the same Court.

Learned district delegate after hearing both the parties was pleased to reject the applications under order IX rule 13 C.P. Code and application under section 5 of the limitation Act but by the same order also revoked the succession certificate granted earlier on the ground of having no jurisdiction vide order dated 29.08.2014.

Feeling aggrieved Petitioners preferred appeal before the learned Additional District Judge, Barrackpore against the aforesaid order dated 29.08.2014 being Misc. Appeal No. 87 of 2014. Upon hearing all the parties learned additional District Judge, First Court Barrackpore by his order dated 31st July, 2015 was pleased to observe that as district delegate civil judge (Junior Division) acts in power of district judge, so appeal against his order would lie before Hon'ble High Court under section 384 of the Indian Succession Act, and held thereby that the appeal is not maintainable.

Petitioners state that feeling aggrieved by that order petitioners filed civil revisional application

before the Hon'ble Court being No. 3332 of 2015 and on 09.09.2015 this Court was pleased to observe that from the conjoint reading of section 384 and the proviso to section 388(2) of the Act, there is no hesitation to say that the appeal before a district judge is competent as the order revoking the certificate was passed by a district delegate by virtue of conferment of jurisdiction /power by the state government.

In the present case the petitioner states that on 22.12.2016 the aforesaid Misc. Case No. 87 of 2014 was heard by learned District Judge, First Court, Barrackpore on remand and after hearing both the parties, learned Additional District Judge, 1st Court was pleased to dismiss the Misc. Appeal with the observation that deceased Alok Kumar set at the time of his death was ordinarily residing at Masila, Ram Chnadrapur , Howrah in view of OPW-1's earlier statement and as such learned District Delegate, Barrackpore has rightly come to a conclusion that it has no jurisdiction to issue succession certificate as prayed for. Accordingly court below held that succession certificate issued in Misc. Case no. 39/2009 is defective in substance due to want of jurisdiction and that said certificate was

obtained by active concealment of the actual ordinary place of residence of late Alok Kumar set at the time of his death and thereby was pleased to dismiss the Misc. appeal 87/2014 vide impugned order dated 22.12.2016.

Needless to say that as per Section 371 of the Indian Succession Act, the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death has the jurisdiction to grant succession certificate and/or to revoke the same.

It is not understandable, when at the time of disposal of C.O. 3332 of 2015, this court has made clear direction upon learned Additional District Judge, to hear out the appeal on merit, then why learned Additional District Judge on the basis of stray statement of OPW-1 that “he was also residing at our place (Masila Ramchandrapur, Howrah) at that time” came to the conclusion that Barrackpore court has got no jurisdiction and dismissed the appeal without deciding the same on merit.

When petitioner with the help of death certificate and other documents clearly established that deceased ordinarily resided at the time of his death within the jurisdiction of Barrackpore court and movable properties of deceased also within

jurisdiction of Barrackpore Court then what prompted court below to rely upon a stray statement of OPW-1 and discard all documentary evidences, is really not understandable. Even the documents filed as annexure with affidavit in opposition by the opposite parties prima facie shows that deceased at the time of death was ordinarily residing within the jurisdiction of Barrackpore Court and not within Howrah Court.

When series of documents go to show that the deceased ordinarily resided at the time of death at Barrackpore, then oral evidence cannot prevail over documentary evidence and the documentary evidence is self-speaking in the present case. Oral evidence if any cannot run counter to the written documents.

In view of the above, I have no hesitation to held that both the District Delegate, Barrackpore, and the First Appellate Court at Barrackpore are competent to deal with the issue.

In view of the above, both the order impugned dated 22.12.2016 passed by learned Additional District Judge, First Appellate Court in connection with Misc. Appeal NO. 87 of 2014 and the order passed by District Delegate dated 29.08.2014 in Misc. Case No. 36 of 2010 are hereby set aside.

Learned District delegate at Barrackpore is hereby directed to hear the matter afresh on the point of revocation of succession certificate as prayed by opposite parties herein on merit in terms of section 383 of Indian Succession Act and to pass order after giving opportunity of fresh hearing to both the parties within a period of three months from the date of communication of the order.

With the above observation this application being CO 232 of 2017 is disposed of. However it is made clear that this Court has not gone into the merits of the case, and learned district delegate will decide the issue, if necessary after taking evidence, without being influenced by any observation of this court.

(Ajoy Kumar Mukherjee, J.)