

07.07.2022
(D/L-07)
Ct.-18
(Susanta)

C.O. 352 of 2022

Partha Samanta
-Vs-
Tirth Nath Yadav & Anr.

Mr. Partha Pratim Roy,
Mr. Moniruzzaman,
.... For the Petitioner.

Mr. Rahul Karmakar,
Mr. Sounak Mukherjee,
.... For the O.P No. 1.

Mr. Rupak Ghosh,
Mr. Debdut Mukherjee,
Mr. Uttam Bhattacharya,
.... For the O.P. No. 2.

The revisional application under Article 227 of the Constitution of India is directed against the order dated October 19, 2020 and the order dated March 31, 2021 passed by the 5th Bench, City Civil Court at Calcutta in O.C. No. 21 of 2018.

The petitioner is the named executor of the alleged last Will and testament of Swapan Kumar Mallick. On the failure of the petitioner to apply for grant of probate of the said Will, the opposite party no. 1, one of the beneficiaries of the said Will, applied for Letters of Administration of it.

The petitioner however subsequently applied for such grant and thereupon the opposite party applied for transposition of him into the category of the defendant.

In the meantime on the objection to the said grant by the widow of the testator, the proceeding became contentious.

On the death of the said widow her sister the opposite party no. 2 herein applied for her addition in the proceeding.

The learned Trial Judge by the first order impugned has allowed an application filed by the opposite party no. 1 for his transposition into the category of the defendant and has recorded the death of the widow of the testator.

Mr. Rahul Karmakar, learned advocate for the opposite party no. 1 submits that in view of the steps being taken by the executor for grant of probate of the said Will, his client applied for his transposition into the category of defendant but the learned Trial Judge erroneously treated him as an objector to the grant by completely overlooking that he had applied for grant of Letters of Administration of the said Will.

Describing the opposite party no. 1 in the first order impugned as the objector will not change his stand in the proceeding. The first order impugned dated October 19, 2020, therefore, does not call for any interference.

The learned Trial Judge by the second order impugned has allowed the application filed by the opposite party no. 2.

The opposite party no. 2 has no caveatable interest in respect of the estate left by the testator as such is not entitled to be added in the proceeding.

The second order impugned being order dated March 31, 2021 is therefore not sustainable and is accordingly set aside.

Mr. Rupak Ghosh, learned advocate appearing on behalf of the opposite party no.2 submits that the widow of the testator has left a Will whereby she bequeathed the entire estate of her deceased husband inherited by her to his client and the husband of his client is the named executor of the said Will as such he is entitled to be added in the proceeding.

The executor of the said Will, if so advised, is at liberty to apply for his addition in the said proceeding but this Court is not expressing any opinion on the merit of the said claim.

It is clarified that if such an application is filed for the aforesaid purpose, the learned Trial Judge shall decide the same in accordance with law.

C.O. 352 of 2022 is disposed of with the above terms without any 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.)