

8.12.2022
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Ct. no. 652
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C.O. 1871 of 2022

Smt. Kaberi Chakraborty
Vs.
Smt. Sreejita Mitra Chakraborty

Mr. Shamit Sanyal
Ms. P. Banerjee ...for the petitioner

Mr. Subhankar Das
Mr. G.C. Banerjee
Mr. Bikram Sarkar ...for the opposite party

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Probate case no. 6 of 2022, presently pending before the learned Chief Judge, City Civil Court, Calcutta to the court of learned District Judge, Barasat or any other court having competent jurisdiction at Barasat, North 24 parganas.

The petitioner contended that the petitioner got married with one Tirthankar Chakraborty since deceased in the year 2010 and due to said wedlock, a female child was born who is now aged about four years and is in the custody of the petitioner. Petitioner alleged that after the death of the husband of the petitioner, the opposite party and her men and agents did not allow the petitioner to enter the house of her deceased husband and on the other hand, the opposite party made a complain before the Hasnabad police station with lot of allegations

against the petitioner. Due to the unfortunate and untimely demise of her husband she was forced to live at her parent's house and was denied accesses to her belongings and her husband's belongings at her matrimonial home. Surprisingly during this period the petitioner received a copy of probate application being probate case no. 6 of 2022, which discloses that a probate case has been initiated by petitioner's mother-in-law in the court of Chief Judge, City Civil Court, Calcutta mentioning her present address at Behala, Kolkata. The petitioner states that she is unemployed and it is difficult for her to travel such a long distance alone to contest the said probate proceeding. She is also custodian of minor child aged about four years and she further submits that learned City Civil Court, Calcutta has no territorial jurisdiction to try the aforesaid probate proceeding being probate case no. 6 of 2022.

The petitioner further submits that the opposite party's permanent residence is at Taki, North 24 parganas and the present address of petitioner as given in the cause title of the said suit is not her residential place. Furthermore, all the properties being the subject matter of probate proceeding are situated at Taki, North 24 parganas and as such City Civil Court, Kolkata does not have any jurisdiction to try the case. The petitioner wants to contest the aforesaid probate suit and therefore the petitioner has prayed for aforesaid transfer.

Learned counsel for the opposite party submits that the opposite party is presently aged about 66 years and she is presently residing in Behala, Kolkata and as such it would be inconvenient for her, if the case is transferred as sought for in the application. she further submits that part of the movable properties in connection with probate suit are within the jurisdiction of City Civil Court, Calcutta and the immovable property in connection with said probate suit situates within the jurisdiction of Barasat. In this context, she relied upon judgment of cases reported in (2008) 3 SCC 659 and C.O. 1792 of 2019 passed by this court. Accordingly, she submits that the City Civil Court, Calcutta has jurisdiction to try the case and opposed the prayer for aforesaid transfer.

I have considered the submissions made by both the parties also considered the convenience and inconveniences as pleaded by the parties. The moment the probate proceedings become contentious, it partake the character of a suit. Section 276 of the Indian Succession Act provides for the territorial jurisdiction of probate proceeding. This states that the territorial jurisdiction of the court to entertain an application for probate depends upon the fact whether the deceased at the time of his death had a fixed place of abode or residence within the local limit of the jurisdiction of the Judge before whom the application is made. Here it is

not disputed that the permanent place of abode or residence of the deceased is at Taki, Hasnabad, North 24 parganas which is also evident from the death certificate of the deceased. It is also not disputed that the immovable property in connection with the will, in respect of which grant of probate has been prayed for, situates within the jurisdiction of Barasat Court. When the statute has specified fixed place of jurisdiction of a particular case, then in my considered opinion, the prayer for transfer made by the petitioner is justified and it would be appropriate for the ends of justice to allow such prayer. The case law cited by opposite party reported in (2008) 3 SCC 659 is a reiteration of broad propositions, as to what may constitute the ground for transfer. C.O. 1792 of 2019 relates to transfer of a matrimonial proceeding initiated by husband for dissolution of marriage against wife, where guiding principle is convenience of wife who has no earning, should be of paramount consideration, which is not squarely applicable in the present context. In view of the facts of the case, the prayer made by the petitioner is allowed.

In view of above, learned Chief Judge, City Civil Court, Calcutta is hereby directed to withdraw the probate case no. 6 of 2022 presently pending before the court of Chief Judge, City Civil Court, Calcutta and to transmit the same to the court of learned District Judge,

Barasat, North 24 parganas within a period of three weeks from the date of communication of the order.

The transferee court shall serve fresh notice upon both the parties intimating the next date of hearing before proceeding further with the aforesaid suit.

The department is directed to send a copy of the order to the learned Chief Judge, City Civil Court, Calcutta and learned District Judge, Barasat, North 24 parganas.

Accordingly, C.O. 1871 of 2022 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)