

20.09.2022
Item No.7
Ct. No.7
CHC
(disposed of)

C.O.2207 of 2022

**Smt. Kalyani Dhara (Pal) & anr.
Vs.
Sri Badal Chandra Dhara & ors.**

Mr. Prasanta Bishal
...for the petitioners

Petitioner feels aggrieved with the order dated 1st July, 2022, passed by learned Additional District Judge, Haldia, Purba Medinipur, in Other Suit No.2 of 2016, for keeping the interlocutory application deferred, praying for examination of the signature of one Prafulla Kr. Dhara by expert with the signature of same person found on a Sale Deed dated 31.12.1986.

At the very threshold of this case, learned advocate for the petitioners has frankly submitted that there has been previous rejection of a prayer for handwriting expert on the score that there was no such pleadings taken in the written objection filed by the petitioners.

Admittedly, petitioners were impleaded in aid of Order 1 Rule 10 C.P.C. in 2018. A written objection was then filed by the petitioners on 24th July, 2022. Subsequently, by order dated 26th April, 2022, the petitioners were permitted to file additional written objection.

Upon referring such facts, learned advocate appearing for the petitioners submits that the moment when there was previous rejection of a prayer for comparison of the signature of the testator with some other documents by handwriting expert, there was no such averment taken in the written objection filed by the petitioners, but subsequently, petitioners being granted leave to file additional written objection, that pleading is very much there in additional written statement, and the court below ought to have considered such aspect, and ought not to have kept that petition deferred.

Incidentally, it is disclosed by the learned advocate for the petitioners that all attesting witnesses to the Will under challenge are alive.

The only contention expressed by the petitioners is that there has been prejudice caused to the petitioners for keeping the application praying for handwriting expert deferred.

Upon perusal of the impugned order, it appears that the court below has proceeded to collect evidence of P.W.1, and the Will has been kept in the safe custody.

The fundamental grievance of the petitioners is deprivation of their legitimate share in the subject property, and accordingly, the petitioners have challenged the execution of the Will. When attesting

witnesses are very much alive at the moment, which was disclosed by the petitioners, such point may be best addressed undertaking cross-examination by the petitioners during the time of the examination of attesting witnesses.

In the event of non examination of attesting witnesses to the Will-in-question, there may question come for comparison of signature of the testator found in the will with some other admitted or proved to the satisfaction of the court, as available in Section 73 of the Indian Evidence Act.

That being the position, there is hardly anything left for any elaboration.

Since the primary grievance of the petitioners is against the deferment of the prayer for comparison of the signature of the testator of the Will with some other document mentioned in the order impugned, the same may be considered after the cross-examination of P.W.1 followed by non examination of attesting witness by the petitioners, proposing grant of probate.

The revisional application is thus disposed of with the observation mentioned hereinbelow.

Petitioners are directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)