

15.11.2022
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Ct. no. 652
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C.O. 2359 of 2022

**Swarupa Biswas
Vs.
Prabhat Chandra Biswas & Ors.**

Mr. Satyam Mukerjee
Ms. Sayani Ahmed ...for the petitioner

Mr. Dhananjoy Banerjee
Mr. Surajit Basu ...for the O.P. no. 8

The petitioner has filed this application under Section 24 of the Civil Procedure Code seeking transfer of original suit no. 17 of 2019 from the 1st Court of learned Additional District Judge at Barasat, North 24 Parganas to any other competent court of learned Additional District Judge at Barasat, North 24 Parganas.

The petitioner contended that the husband of the petitioner initiated a proceeding for grant of probate of last will and testament dated 24.1.2001 of Late Sanatan Biswas as the sole executor and beneficiary and the same was registered as Misc. Probate case 345 of 2002 before the court of learned District Delegate at Barasat. The opposite party nos. 1 & 4 to 9 entered appearance in the said proceeding and filed therein written objection. The said proceeding was subsequently renumbered as Misc. Probate case no. 563 of 2006. During pendency of the Misc. probate case, the sole executor and beneficiary that is the husband of the petitioner died intestate on

25.11.2014. Subsequent to the death of the husband of the petitioner, the proceeding was transferred to the court of 1st Court of learned Additional District Judge at Barasat, North 24 Parganas and renumbered as original suit no. 17 of 2019 on account of being contentious.

The petitioner further submits that the opposite parties have received summons. As inordinate delay was causing in disposal of the probate proceeding, the petitioner preferred a revisional application being C.O. 1456 of 2021 before this court and this Hon'ble Court, upon hearing the submissions, allowed the prayer for expeditious disposal of original suit no. 17 of 2019 with a direction to dispose of the case within a period of six months from the date of communication of the order on priority basis as the matter dates back to 2002. The said order was duly communicated to the learned court below but the 1st Court of learned Additional District Judge at Barasat, North 24 Parganas was lying vacant for a long time. Subsequently, the said court started functioning but the said proceeding is still pending as learned court below had been mechanically fixing dates in the case, without appreciating that the proceeding is pending since 2002 and taking advantage of pendency of the suit, the opposite party are trying to grab the bequeathed property by any means. Accordingly, the petitioner has prayed for aforesaid intra-district transfer, so that the matter cannot get delayed any further.

Learned counsel for the opposite party submits that the petitioner herein has sought for time on several occasion before the court below and for which the disposal is getting delayed. In fact, there is no substance in the prayer made by the petitioner for the aforesaid transfer and on the contrary, further direction may be given to the court below for early disposal of the said proceeding.

Considering the facts and circumstances of the case, it appears that the ground for transfer has not been substantiated by any cogent reason except allegation that the delay is caused by officer concerned. The petitioner has rightly contended that the earlier direction made by this court in C.O. 1456 of 2021 for disposal of the proceeding within a period of six months, has not been honoured.

Accordingly, I dispose of the present revisional application with a further direction upon the learned Additional District Judge, 1st Court, at Barasat, North 24 Parganas to dispose of the original suit no. 17 of 2019 within a period of six months positively without granting any unnecessary adjournments to either of the parties and if necessary directing day to day trial on strictly priority basis following the provisions as laid down in order XVII of the Code of Civil Procedure.

Accordingly, C.O. 2359 of 2022 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)