

21.07.2023.
Item No. 28.
Court No.13
ap

**R.V.W. No. 73 of 2022
With
I.A. No. CAN 1 of 2022
And
I.A. No. CAN 2 of 2023
In
W.P.A. No. 170 of 2021**

**Somnath Ghosh
Versus
Smriti Jati & Ors.**

Mr. Arka Pratim Chowdhury,
Ms. Sreya Chakraborty.

...For the petitioner.

Mr. Prosenjit Mukherjee,
Ms. Madhurima Sarkar,
Mr. Saptarshi Chakraborty,
Mr. Tirthankar Mukherjee,
Mr. Ayon Shubhra Bandyopadhyay.

...For the applicant.

Mr. N. C. Bihani,
Ms. Papiya Banerjee,
Mr. Soumyajit Ghosh.

...For the State.

1. R.V.W. No.73 of 2022 has been filed seeking review of the order dated 13th September, 2021 passed in W.P.A. No. 170 of 2021. The petitioner has challenged the same before a Division Bench of this Court in M.A.T. No. 153 of 2022 where the Division Bench of this Court had directed the petitioner to seek such review.

2. It is submitted that during the pendency of the proceedings Aditi Ghosh, a resident, who was living in the said property has died and what remains is the right of Smriti Jati.

3. Counsel for the Smriti Jati submits that their father had executed a Will reserving life interest of residence in the said property.

4. On the contrary, Counsel for the respondent Somnath Ghosh submits that he has obtained a Probate of the Will and Testament of the deceased, Samarendra Nath Ghosh under Section 289 of the Indian Succession Act, 1925 being Misc. Case No. 34 of 2021 (Probate) from the District Delegate, Baruipur.

5. It is further submitted by the review applicant that the Court had directed only Aditi Ghosh to be escorted back into the ground floor of the said premises and at the relevant point of time, Somnath Ghosh was residing in the first floor as per the report of the police.

6. Counsel for the review/applicant submits that he was residing in the ground floor. He now submits that under the pretext of complying with this Court's order dated 13th September, 2021, he has been thrown out from the entire premises subject to any civil proceedings and any right of the parties may obtain or have already been obtained from a Civil Court, the said Somnath Ghosh shall be entitled to reside in the first floor of the premises.

7. It appears from the order dated 13th September, 2021 that the writ petitioner Smriti Jati, 36 years of age, was not a Senior Citizen herself. She was espousing the cause of one Aditi Ghosh, her Aunt, who

was allegedly dispossessed by Somnath Ghosh, review/applicant.

8. The said Smriti Jati did not and could not have prayed for any direction to enter the property except to assist her old and infirm Aunt, Aditi Ghosh. Aditi Ghosh has since died on 31st January, 2023. Since she has entered into the property under the orders in the writ petition only to aid the Senior Citizen, who is now deceased, the said Smriti Jati shall be immediately, escorted out of the premises by Sonarpur Police Station, Baruipur Police District.

9. Mr. Mukherjee, Counsel appearing for the Smriti Jati submits that there is a Will and or a document entitling his client, to stay in the premises along with Aditi Ghosh.

10. If such right exists in law, the same may be enforced in accordance with law before an appropriate Civil Forum.

11. The aforesaid order directing Smriti Jati to be escorted out of the premises along with her belongings shall abide by the result of any civil proceedings which Smriti Jati may take in accordance with law.

12. In view of the above, the instant review application is hereby allowed and disposed of.

13. There will be no order as to costs.

14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)