

17.08.2023
Sl. No.8(DL)
srm

C.O. No. 1595 of 2023

In the matter of : Mrs. Asha Upadhyai & Ors.

...Petitioners/Applicants

Mr. Chandra Sekher Banerjee,
Mr. Shamit Dutta

...for the Appellants/Applicants.

The revisional application has been filed challenging an order dated March 17, 2023 passed by the learned Civil Judge (Senior Division), 1st Court, District Delegate at Barasat, North 24-Parganas, in Succession Case No.150 of 2022.

The learned court held that as in the death certificate the address of the deceased was mentioned as B-7 C.T.S. 113/2, Anugiri Society Mankhurd, Mumbai-400088, the court did not have any jurisdiction to take up the matter. The court returned the petition along with all documents to the applicants/petitioners.

Section 371 of the Indian Succession Act, 1925 provides that jurisdiction to grant certificate would be with the District Judge within whose jurisdiction the deceased ordinarily resided at the time of death, or, if at the time he had no fixed

place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found.

It appears that the deceased went to Mumbai for treatment and was admitted to Hinduja Hospital. The sons reside in Mumbai who had taken the father for treatment, where the father breathed his last. As such, the address in the death certificate was the son's residential address. However, there are other documents, namely, ration card, the deed of conveyance by which the deceased had acquired a flat in a cooperative society at Lake Town, the membership of the cooperative society, etc. which would indicate that the deceased ordinarily resided in Kolkata at P-831, Block A, Lake Town, Flat No.3, Kolkata-700089. There is no dispute amongst the heirs with regard to such issue and they have jointly applied for the succession certificate. Just because the deceased breathed his last in Mumbai when he was undergoing treatment and was under the care of the son at Mumbai, the jurisdiction of the learned court below, would not be taken away. The property of the deceased are all situated within the jurisdiction of the court.

Accordingly, the revisional application is allowed upon setting aside the order dated March 17, 2023. The learned court below shall readmit the petition and the documents and dispose of the succession case.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)