

17.08.2023
Sl. No.19(DL)
srm

C.O. No. 1641 of 2023
Bhaswati Banerjee & Anr.
Versus
Karabi Dutta & Ors.

Mr. Amitabha Ghosh,
Ms. Nabanita Chatterjee

...for the Petitioners.

Mr. Samir Kumar Dhar,
Mr. Chittapriya Ghosh

...for the Opposite Party No.1.

The petitioners are the heirs of the executor of the last Will and Testament of one late Raghunath Bandyopadhyaya. The executor, who was the predecessor-in-interest of petitioners, filed Probate Suit No.26 of 2003. The suit is pending before the learned Additional District Judge, Fast Track (1st Court), Hooghly Sadar. The suit is being contested. After death of the executor, the petitioners as the heirs, prayed for grant of Letters of Administration by amending the probate application.

By the order impugned, the application filed by the petitioners for amendment of the probate application was partly allowed and partly refused. The probate suit is being contested by the opposite party No.1, the objector.

By the amendment application four schedules were sought to be incorporated in the plaint as follows:-

“1. In the cause title of the Plaint, the name of the applicant Tultul Bandhapadhya be omitted and the names of the substituted petitioners be inserted.

1. Bhaswati Banerjee

W/O- Late Tultul Bandyopadhyay

Residing at 168(old 63/B), Bhupendra Nath Road,
P.O.+P.S.- Uttarpara, Dist-Howrah, Pin-712258

2. Pinjola Bhattacharya Banerjee

W/O-Abhisek Bhattacharya

221, Saradapally Sector-I, P.O.-Makhla, P.S.-
Uttarpara, Dist-Hooghly, Pin- 712245.

In the 3rd line of the prayer portion of the plaint “Probate” word may be omitted and “Letters of Administration” word may be inserted.

2. After the last line of the paragraph no.3 of the Plaint, the following sentence maybe written as – “which was got by the applicant Tultul Bandhapadya from the almirah of his father in the month of December, 1996.”

The third proposed amendment was insertion of a schedule of the property situated in the district of Hooghly, within Pandua Police Station under Simlagarh-Vitasin Gram Panchayat as contained at pages 45 to 52 of the revisional application.

Further proposed amendment was in respect of incorporation of a house property at Uttarpara-Kotrung Municipality, namely,

“All that piece and parcel of property situated at Mouza-Uttarpara, J.L. No.12, R.S. Khatian No.485 L.R.

Khatian No.3594, R.S. Dag No.518, L.R. Dag No.512, 517, 518, 520, 522 & 524, along with two storied residential building thereon including right of user over & across R.S. Plot No.405/547, 406/548, 407/549, R.S. Khatian No.485 under Holding No.168 old 63/B, Bhupendra Nath Road, under Uttarpa Kotrung Municipality."

The learned court below allowed the formal amendments with regard to deletion of the name of the original applicant and insertion of the names of the substituted petitioners. Deletion of the expression "Probate" and insertion of Letters of Administration was also allowed.

The learned court below rejected amendment for incorporation of a sentence with regard to discovery of the Will, inclusion of a fresh schedule and the house, in the plaint's schedule. The learned court below was of the opinion that the amendment of the schedule would amount to changing the Will.

Having perused the Will, it appears that no property or schedule had been mentioned in the Will. The executor had filed the application for amendment delineating some property which, according to the present heirs of the executor, who have prayed for letters of administration do not exist in view of transfers which had taken place. Allowing the amendment, would not amount to changing the Will, as no property has been mentioned in the Will. Unless such

amendment is allowed, it would be difficult for the court to pass necessary orders while granting the relief to the petitioners if they are ultimately successful in the proceeding. Moreover, third party rights have been created which may result in multiplicity of proceedings. The correctness of the statements incorporated by the amendment are not to be decided in this proceeding.

The issue with regard to the irregularity in the citation and genuineness of the Will, schedule of the existing property etc. are matters which will be decided in the main proceeding and the objector can raise all such objection at the trial.

Accordingly, the order impugned is modified to the above extent. The amended plaint will be filed within four weeks from date. The objector will file an additional written statement within four weeks from receipt of the amended plaint. The correctness of the statements made in the amendment application with regard to the plots comprising the lands of the testator, shall be decided at the trial, on evidence.

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.)