

13.06.2023
Sl. No.14(DL)
srm

C.O. No. 1647 of 2023

Vineet Kumar Swaika

Versus

Vijay Kumar Swaika

Mrs. Sabita Mukherjee Roy Choudhury,
Mr. Sanket Das,
Mr. Sabhojeet Mookerjee

...for the Petitioner.

Mr. Ranjan Bachawat,
Mr. Soumya Roy Chowdhury,
Mr. S. Dutta Majumdar,
Mrs. Pubali Sinha Chwdhury,
Mrs. Ratnadipa Sarkar

...for the Opposite Party.

The revisional application has been filed against an order dated November 23, 2022 passed in Misc. Revocation Case No.01 of 2019 by the learned Chief Judge, City Civil Court at Calcutta. The revocation case was dismissed on contest on the ground that the said application was barred by the law of limitation.

According to the learned court below, the application should have been filed within three years from the date of knowledge. The Court found that the petitioner had come to know about the succession certificate during the course of litigation. Even if the petitioner was not officially informed

about the number or date of the application by dint of which the opposite party was issued the succession certificate, the learned court was of the view that when the petitioner came to know about the existence of a succession certificate from the evidence of the opposite party, the period of limitation of three years should start from the said date. Applying the residuary clause, mainly Article 137 of the Limitation Act, the learned court below rejected the application on the ground that the same was filed after 10 years from the date of knowledge.

The learned Advocate for the petitioner claims ownership with regard to the two flats which were allegedly gifted to him by Smt. Gyanwati Devi Swaika, since deceased. At the time of gift, the petitioner was a minor and the said gift was accepted by the opposite party, who is the biological father of the petitioner. The learned Advocate further submits that when the opposite party applied for issuance of a succession certificate he had suppressed the fact that he was not the biological son of late Gyanwati Devi Swaika and fraudulently led the court to believe the he was the son of Kanti Swarup Agarwal. It is alleged that the opposite party was not entitled to the succession certificate in respect of the rent accruing to the premises which were mentioned in the schedule to the application.

The petitioner, as the son, disputes the right of the opposite party to obtain the succession certificate on such grounds and it is further submitted that the fact whether the opposite party was the adopted son of the said Gyanwati Devi Swaika was also a disputed question.

According to the learned Advocate for the petitioner, fraud and misstatement vitiates all proceedings and the succession certificate should be revoked as the same was obtained fraudulently and was *void ab initio*. It is further submitted that taking advantage of the succession certificate the opposite party tried to establish his title in respect of those properties which were gifted to the petitioner and hence such revocation would be necessary for proper adjudication of the disputes between the parties in various litigations.

Mr. Bachawat, learned Senior Advocate appearing on behalf of the opposite party opposes the prayer and refers to the cross-examination of the opposite party dated July 1, 2009. During cross-examination, the opposite party had categorically stated that he had been granted a succession certificate in respect of the rent accruing to the properties in question. He was ready to produce the same before the Court.

On such issue and evidence, the petitioner did not ask for production of the succession certificate, although the fact

was brought to the knowledge of the petitioner in 2009. After 10 years from such disclosure of succession certificate, the application for revocation of the succession certificate was filed. The learned court rejected such application on the ground of limitation.

In the decision of Ramesh Nivrutti Bhagwat vs. Dr. Surendra Manohar Parakhe reported in (2020) 17 SCC 284, the Hon'ble Apex Court observed that the period of limitation applicable for cancellation of probate or letters of administration would be guided by Article 137 of the Limitation Act. The learned court below applied such principle and also noted that in case where no limitation is prescribed by the statute, the period of limitation would be guided by the residuary clause.

This Court has no hesitation to hold that Article 137 of the Limitation Act will be applicable in the case in hand. There is also no doubt that the petitioner came to know about the succession certificate on July 1, 2009. Sometime in 2018, the petitioner filed an application under Act XXXIX Case No.64 of 2002 for supply of certified copy of the order dated February 13, 2002 and for a copy of the succession certificate. The prayer was allowed. Thereafter, the petitioner filed the application for revocation sometime in 2019.

The petitioner has not been able to show from the records the reasons for which between July 1, 2009 to 2018 the petitioner did not or could not have applied for the certified copy of the succession certificate and the order passed therein. Moreover, succession certificate is granted in respect of the moveable properties and the right, title and interest of the petitioner in respect of the two flats of late Gyanwati Devi Swaika would not be affected in anyway by the succession certificate. The title of the petitioner in respect of the properties of late Gyanwati Devi shall be decided in a civil suit. The succession certificate is not a proof of title of the opposite party in respect of any immovable property. The petitioner does not stand to lose in any way by the rejection of his application for revocation which was filed after 10 years from the date of knowledge, without any cogent explanation for such delay. Moreover, the reason for seeking revocation is also not clear from the pleadings.

The Court does not find it necessary to interfere with the order impugned.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)