

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FA 24 of 2022
with
IA No.CAN 2 of 2020 (Old No.CAN 2777 of 2020) (Disposed of)
with
IA No. CAN 4 of 2023
with
IA No. CAN 5 of 2023

Rabindra Nath Sadhukhan
(since deceased substituted by Raja Sadhukhan)
versus
Sri Gopal Chandra Sadhukhan

For the Appellant : *Mr. Asit Baran Raut,*
Mr. Tushin Subhra Raut,
Mr. Asit Kumar Chowdhury,
Ms. Ishita Raut.

For the Respondent : *Mr. Mukul Lahiri, Sr. Adv.,*
Mr. Victor Dutta.

For the added Respondent : *Mr. Sanjib Dawn.*

Hearing is concluded on : *15th May, 2023.*

Judgment On : **14th June, 2023.**

Partha Sarathi Chatterjee, J.

1. Legality and propriety of the judgment dated 20th June, 2016 passed by the learned Judge, City Civil Court, 3rd Bench, Calcutta in O.C. No. 2014, whereby letters of administration in respect of the Will executed by one Jahar Lal Sadhukhan dated 22.12.1986 was granted to his son namely, Sri Chandan Kumar Sadhukhan, has been called in question in the present appeal.

2. One Gopal Chandra Sadhukhan (in short, Gopal) filed an application under Section 268 of Indian Succession Act, 1925 (hereinafter referred to as the Act of 1925) praying for grant of letters of administration in respect of registered Will executed by Jahar Lal Sadhukhan (in short, Jahar) on 22.12.1986.

3. Facts frescoed in that application presented under Section 268 of Act of 1925 are as follows :

- i) One Balai Chand Sadhukhan (in short, Balai) happened to be the absolute owner of five properties. By executing one deed of trust, Balai divested himself from absolute ownership of those properties and endowed the properties to his family idols namely, Thakur Sree Sree Iswar Gour Gobinda Jew and Sree Sree Iswar Narayan Jew, consecrated in the premises *vide* no. 11/2, Gobinda Sen Lane, Kolkata- 700 012;

- ii) In the deed of trust, it was stipulated that Balai would be the first trustee and after his demise, all his sons and in case of death of any of his son, his senior most male heir in the male line shall be the joint trustee and the settlor appointed shebait/shebaits for performing seba puja of the family deities;
- iii) In the deed of trust incorporating one restriction clause, settlor desires that if any of shebait or shebaits renounces or renounce the Hindu faith or seizes or seize to be a Baishnab then he or they shall seize to be shebait or shebaits and the person or persons next entitled to succeed as shebait or shebaits in pursuance of the provisions contained in the deed, shall take his or their place and shall become shebait or shebaits;
- iv) Balai died in 1950 leaving behind five sons namely, Sunendranath, Nagendranath, Jitendranath, Debendranath and Jagendranath, who became joint trustees and all those sons of the settlor have expired and now, the applicant being the eldest son of Brojomohan, Soumitra, eldest son of Ramlal and Rabindranath, eldest son of Jahar are alive;
- v) On 06.02.1988, Jahar died leaving behind three sons, Rabindranath (in short, Rabin), Chandan and Malay. Rabin and Malay inflicted tortures upon Balai in various manners and Rabin and Malay became non-baishanb and hence, Jahar executed one Will whereby he disinherited both Rabin and Malay from the trust properties and debarred them from taking

part in the affairs of debuttar properties either as trustee or as shebait. In the Will, Jahar's daughter namely, Chitra was appointed as sole executrix;

- vi) Chitra predeceased Jahar. Chitra's daughter, Mousumi died after the death of testator. Mother and wife of Jahar also predeceased Jahar and since, there was none to apply for probate and Jahar himself handed over the I.G.R. of the registered Will to the applicant, who happens to be the one of the trustees as well as one of the shebaits of the trust properties, applied for letters of administration in respect of that Will. In the affidavit of asset, premise (which is three-storied building one) located at 14/2/B, Shree Gopal Mullick Lane, P.S.-Muchipara, Kolkata -700 012 was mentioned as a property forming the subject matter of the Will.

4. Record postulates that initially the application for grant of letters of administration was registered as LA case no. 30 of 2010 but Rabin resisted the grant of letters of administration by filing written objection rendering the case as contentious cause. The case was renumbered as O.C. no. 21 of 2014 and was transmitted to the learned Court below for disposal.

5. The grounds on which resistance was raised against grant of letters of administration, *inter alia*, are that such application is not maintainable. Jahar used to inflict tortures in various manners upon his daughters. Rabin and Malay raised their voice against such tortures and even one of his daughters namely, Asha Lala Jana lodged a complaint against her father

which was registered as Muchipara P.S. Case no. 53 dated 22.02.1990 under sections 306/34 IPC. It was claimed therein that Chitra, another daughter of Jahar committed suicide. Will is nothing but outcome of family conspiracy. Jahar was not absolute owner of trust properties and he was merely one of trustees/shebait and Jahar had no right to modify the terms of the deed of trust and virtually, Will has no value in the eye of law and even if letters of administration is granted in respect of such Will, the same shall not confer any right, title and interest in any property.

6. Upon pleadings of the respective parties, following issues were framed:

- i. Whether the case is maintainable in its present form and prayer?*
- ii. Whether the testator had any testamentary capacity to execute the will dated 22.12.1986?*
- iii. Did the petitioner obtain the Will fraudulently?*
- iv. Whether the testator was mentally sound and physically fit at the time of execution of the Will in question?*
- v. Is the Will valid according to law?*
- vi. Had the testator any right, title and interest over the property under the Will?*
- vii. Whether the petitioner is entitled to get the probate of the will dated 22.12.1986 executed by the testator?*
- viii. To what other relief or reliefs, if any, is the petitioner entitled?*

7. In corroboration of the facts depicted in the application for grant of letters of administration, Gopal adduced oral testimonies of himself and of one Samiran Dutta, an attesting witness, being a practicing Advocate and Gopal tendered certain documents namely, i) original certificate of death of Jahar, ii) certificate of death of Chitra & iii) Original Will dated 22.12.1986 whereas to resist the grant of letters of administration, Rabin adduced his oral account but he did not produce any document.

8. After contested hearing, learned Court below granted letters of administration in respect of the Will of Jahar in favour of Chandan. Aggrieved thereby, the Rabin has preferred the appeal contending, *inter alia*, that the learned Court below fell in error in not considering that the propounder has not been able to prove valid execution and due attestation of the Will and propounder failed to prove that that testator executed the Will out of his own volition in sound and disposing state of mind after understanding the nature and effect of disposition and learned Court below did not consider that no evidence has been brought on record to show who drafted the Will and recitals of the alleged Will are full of distortion of material facts which suggests that testator was quite ignorant of the contents of the Will and learned Court below committed mistake in not considering that Gopal has no right in making application for grant of letters of administration in respect of the Will of Jahar and learned Court below did not consider that since both the legatees and/or beneficiaries died prior to grant of probate of the alleged Will, there was no need for granting letters of

administration to a stranger and Will has become infructuous by reason of death of both the legatees.

9. Both the appellant and the respondent have filed two separate applications under Order XLI Rule 27 of the Code praying for leave to adduce additional evidence. In the application taken out by the appellant, annexing plaint of partition suit being T.S. no. 1339 of 2006, revised report of partition-commissioner and two hand-made sketch maps and order dated 23.3.2015, whereby the suit for partition was disposed of, appellant claimed that these documents are required to be brought on record for effective adjudication of the appeal whereas in the application filed at the instance of added respondent, namely, Chandan, appending the order impugned herein, subject Will, certified copy and typed copy of the deed *vide*. no. 4003 of 1960, by virtue of which testator purchased the premises *vide*. no. 14/2/B, Sree Gopal Mullick Lane, Kolkata, Chandan claimed such documents are also required to be admitted in evidence for the purpose of proper adjudication of the appeal. Parties have exchanged their affidavits in respect of both the applications.

10. Mr. Raut, learned advocate appearing for the appellant argues that Gopal has no *locus standi* to apply for grant of letters of administration in respect of the alleged Will executed by Jahar since Gopal is neither beneficiary nor the executor of the Will. He argues that Gopal has no interest in the property bequeathed in the Will. He argues that applicant for grant of letters of administration must have some interest the property forming the subject matter of the Will.

11. Drawing our attention to certain portion of the Will and extract of one book on Will written by R.K. Bag, Retd. High Court Justice of this Court, he submits that as per recital of the Will, self-earned property of testator was bequeathed to his daughter, Chitra and then to Chitra's daughter, Mousumi. He submits that Chitra predeceased the testator and before grant of probate, Mousumi died and hence, legacy lapses. Taking us to the provisions of Section 105 of Act of 1925, he submits that since both the legatees have died, Will lapses and there was no need to grant of letters of administration to Chandan.

12. He submits that two legal heirs of Jahar namely, Malay and Chandan filed one partition suit *vide* T.S. no. 1339 of 2006 which has been disposed of. Partition suit was initially decreed in preliminary form declaring shares of the parties thereto and partition-commissioner was appointed who reported that parties have been enjoying and/or possessing portions of the suit property separately according to their entitlement and hence, partition suit was disposed of.

13. He argues that testator, who himself happened to be one of the trustees/shebait, had no right to alter or modify the terms of the deed of trust. So, recital contained in the Will relating to trust property is meaningless and has no value in the eye of law.

14. He further submits that the Will does not contain the real facts. Rabin and Malay have not become non-baishnab and he asserts that relationship in between Jahar and Rabin was cordial. Taking us to one letter written by Jahar to Rabin, he contends that even Rabin would send money

to Jahar in every month. He submits that Rabin and other two brothers have performed all the rituals after death of Jahar and even they arranged and/or performed shraddha ceremony of Jahar. No legal heirs of Jahar has renounced either Hindu faith or become non-baishnab. Mr. Raut claimed that documents which have been appended to the application for additional evidence can be brought on record as additional evidence. To bolster his submission, he placed reliance upon the judgments delivered in cases of *S. Jhansi Lakshmi Bai & Ors. vs. Pothana Appa Rao & Ors.* reported in AIR 1969 SC 1355, *Mangal Singh –vs- Nathu Singh* reported in (1998) 8 SCC 598 & *North Eastern Railway Administration, Gorakpur –vs- Bhagwan Das* reported in (2008) 8 SCC 511.

15. In response, Mr. Lahiri, learned senior advocate while representing Gopal submits that subject Will was registered and the same was executed in 1986 and testator died 12 years thereafter. Since, Chitra and Mousumi have died, Gopal, who is one of the trustees/shebait of the trust property has applied for grant of letters of administration. Taking us to the provisions of Section 253 of Act of 1925 he argues that use of the expression ‘*any person*’ in this provision has entitled him to apply for grant of letters of administration. He submits that learned Court below has found Chandan as eligible for obtaining letters of administration under Section 234 of the Act. He submits that Chandan like one Manager will administer the property. According to him, deed of trust will form a part of will in view of Section 64 of Act of 1925.

16. He submits that generally, in case of other instruments, in case of conflict in between earlier clause and latter clause in the recital thereof, earlier clause will prevail whereas in Will, in case of such conflict, latter clause will prevail. In the subject Will, in latter clause, Rabin and Malay were disentitled from taking any part in the affairs of the trust property.

17. He further argues that due of lapse of legacy, Will does not lapse. He contends that although partition suit has been disposed of yet parties thereto can raise question relating to title of the property and such question shall be decided as per Order XXI Rule 101 of the Code of Civil Procedure (in short, CPC) when the final decree would be put in execution.

18. He contends that testamentary Court shall not decide the question of title. This Court shall only decide as to whether Will was validly executed and duly attested and whether at the time of execution, testator was in sound and disposing state of mind. He asserts that till the final decree passed in suit for partition is executed, Chandan should be allowed to act as administrator and property should not be left unadministered. To buttress up his argument, he placed reliance upon the judgments delivered in cases of *Durgapada Bera –vs- Atul Chandra Bera & Ors.* reported in *AIR 1937 Cal 595*, *Ishwardeo Narain Singh –vs- Smt. Kamta Devi & Ors.* reported in *AIR 1954 SC 280*, *Kaivelikkal Ambunhi (dead) by Lrs. & Ors. –vs- H. Ganesh Bhandary* reported in *AIR 1995 SC 2491*, *M.S. Premanand –vs- M.R.Purushotam* reported in *(1989) Supp2 SCC 646*, *Badri Nath & Anr. –vs- Mst. Punna (Dead) by Lrs. & Ors.* reported in *AIR 1979 SC 1314*, *Ramchandra Ganpatrao Hande @ Handegee –vs- Vithal Rao Hande & Ors.*

reported in *AIR 2011 Bom 136, Delhi Development Authority –vs- Vijaya C. Gurshaney & Anr.* reported in *AIR 2003 SC 3669, V. Prabhakara –vs- Basavraj K. (dead) by Lrs.* reported in *AIR 2021 SC 863.*

19. Mr. Dawn, learned advocate appearing for the added respondent, Chandan adopted the submissions made on behalf of Gopal and then submits that the property forming the subject matter of the Will cannot be left unadministered and Chandan should be allowed to administer the property till the final decree passed in partition suit is executed. He placed reliance upon a judgment delivered in case of *Venkata Reddy & Ors. –vs- Pethi Reddy* reported in *AIR 1963 SC 992.*

20. In reply, Mr. Raut submits that in the given case, provisions of Section 253 and 234 of Act of 1925 shall have no application.

21. The provisions of Order 41 Rule 27 of the Code read as under:

“27. Production of additional evidence in appellate court.-(1) The parties to an appeal shall not entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if –

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an appellate court, the Court shall record the reason for its admission.”

22. Hence, additional evidence can be taken on four grounds, namely, a) where the learned Trial Court ought to have admitted evidence but refused to admit the same; b) such evidence was not within knowledge or could not be produced in spite of due diligence exercised by the party seeking to adduce such evidence; c) appellate Court requires such evidence to pronounce judgment or d) for any other substantial cause.

23. General rule is that ordinarily the appellate Court should not travel outside the record of the lower Court but Order 41 Rule 27 of the Code carves out an exception to the general rule and enables the appellate Court to take additional evidence on fulfilment of certain conditions and/or contingencies. We cannot be oblivious of the settled proposition that Order 41 Rule 27 has not been engrafted in the Code to enable any party to the *lis* to patch up the weak points in the case and fill up any lacunae or gap in the evidence by adducing additional evidence.

24. In the given case, appellant's prayer for adducing additional evidence does not satisfy the any of the conditions incorporated in sub-rule

1(a) and 1(aa) of Rule 27 and it is to be noted that the words '*or for any other substantial cause*' must be read with the word '*requires*' which is set out at the commencement of the provision. It means that when appellate Court requires additional evidence, appellate Court can accept the same as per sub-rule 1(b) of Rule 27. In other words, when it would be apparent that without taking additional evidence, appellate Court would not be able to pronounce the judgment, then it can take additional evidence.

25. In the case at hand, appellant and the added respondent want the appellate Court to take additional evidence to convince that plaint, revised report of partition-commissioner and order of disposal of partition suit and judgment impugned herein, deed of trust, certified copy and typed copy of the deed by dint of which testator purchased the property bequeathed are required. We are of the view that the evidence brought on record are sufficient enough to enable the Court to decide such issue and hence, applications being CAN 4 of 2023 and CAN 5 of 2023 taken out under Order 41 Rule 27 read with Section 151 of the Code being redundant are rejected. The application for substitution being CAN 2 of 2020 (Old No.CAN 2777 of 2020) had already been disposed of earlier.

26. Basing upon arguments advanced by the parties before us, we are enjoined to give judicial answers to the following queries:

1. Whether Gopal has locus standi to maintain an application for grant of letters of administration in respect of the Will executed by Jahar?

2. Whether in view of death of Chitra and Mousumi, legacy and in consequence, the Will has lapsed?
3. Whether the provision made in the Will regarding trust property can be treated as valid?
4. Whether the applicant could prove that Will was validly executed and duly attested and testator executed the Will in sound and disposing state of mind and after understanding the nature and effect of disposition and whether applicant could remove the suspicions surrounding the Will?
5. Whether the letters of administration was rightly granted in favour of Chandan with the copy of the Will executed by Jahar or not?

27. Answer to query no. 1 :

i. Section 232 of Act of 1925 lays down that when executor has died before the testator or before he has proved the Will, a universal or a residuary legatee may be admitted to prove the Will and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered whereas in Section 234 thereof, it was provided that when there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any legatee having a beneficial interest, or a creditor, may be admitted to

prove the Will, and letters of administration may be granted to him or them accordingly.

ii. Admittedly, Gopal is not an heir of testator and he is not universal legatee or residuary legatee or representative of a residuary legatee nor he is a legatee under Section 234 of the Act of 1925. It is axiomatic that where the applicant is neither an heir of the testator nor a universal legatee, nor a residuary legatee nor even a legatee under Section 234 of Act of 1925, he cannot have any locus standi to make application for grant of letters of administration. [See, case of *Durga Charan –vs- Bhudibala* reported in AIR 1985 Cal 264].

iii. Section 253 of Act of 1925 deals with '*administration limited to collection and preservation of deceased property*'. Section 253 of Act of 1925 lays down that in any case in which it appears necessary for preserving the property of a deceased person, the Court within whose jurisdiction any of the property is situate may grant to any person, whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased and to the giving of discharges for debts due to his estate, subject to the directions of the Court.

iv. The letters of administration granted under this section are called *letters ad colligendum bono defuncti* i.e. to collect the goods of deceased. Such letters of administration is granted for limited purpose namely, for collection and preservation of the property of the deceased and for giving of discharge for debts due to his estate but pre-condition for granting such letters of administration is that it should appear to the Court that

preservation of the property of the deceased is necessary. In the case before us, there was no requirement to invoke the provision of Section 253 of the Act and hence, we express agreement with Mr. Raut that provisions of Section 253 will not be applicable in the given case.

In conclusion, we have no qualm to hold that Gopal has no locus standi to maintain an application for grant of letters of administration in respect of the Will of Jahar in respect of his self-acquired property. Query no. 1 is answered accordingly.

28. Answer to query no. 2 :

i. Section 105 of the Act of 1925 speaks as follows, *‘but shall lapse and form part of the residue of the testator’s property, unless it appears by the will that the testator intended that it should go to some other person.*

(2) In order to entitle the representative of the legatee to receive the legacy, it must be proved that he survived the testator’.

ii. Hence, legislative fiat is that if the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator’s property.

iii. Relevant portion of the Will which can throw light on the issue is as follows :

“... And whereas I have and I am about to inherit various movable properties belonging to my wife since deceased and I do dedicate the said properties or any other properties that I may acquire in future, absolutely in

favour of my said daughter Srimati Chitra Saha and after her death to my grand-daughter Mousumi Saha and to none else with the liberty to take out appropriate Probate therefor without security by my said daughter Chitra Saha as sole Executrix Chitra Saha to this will. This Will will be effected after my death.”

iv. On perusal of this portion of the Will, it is evident that testator intended to bequeathed his property to Chitra and after her death to Mousumi Saha and none else. Admittedly, Chitra predeceased testator and Mousumi has also died. Since Chitra predeceased the testator, legacy to Chitra lapses and consequently, legacy to Mousumi also lapses. Illustration (ii) to Section 105 of Act of 1925 illustrated that a bequest is made to A and his children and if A dies before the testator, or happens to be dead when the Will is made, the legacy to A and his children lapses. So, in unequivocal terms, it can be stated that in the given case, legacy lapses and property forming the subject matter of the Will formed part of the residue of the testator's property.

v. Section 2(h) of the Act of 1925 has defined the Will which means the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. So, if legacy lapses and property which was bequeathed to legatee forms part of the residue of the testator's property i.e. the property comes back to testator, then virtually the Will would be valueless and in all eventualities, the same shall be ineffective. Query no.2 is thus, answered.

29. Answer to query no. 3 :

I. Schedule –III appended to Act of 1925 which deals with restrictions and modifications in application of sections in Act of 1925 lays down as follows :

‘Nothing therein contained shall authorise a testator to bequeath property which he could not have alienated inter vivos, or to deprive any persons of any right of maintenance of which, but for the applications of these sections, he could not deprive them by will.’

II. In view of such provision contained in Schedule-III of Act of 1925, testator is not authorised to bequeath the property which he could not have alienated *inter vivos*. Indisputably, testator being mere one of the trustees/shebait could not have alienated trust property and consequently, testator had no right to bequeath the trust property and even, testator had no authority to confer any right upon any person in respect of the trust property and similarly, he had no authority to deprive any right of any person conferred upon any person as per terms and conditions of the deed of trust. Needless to observe that testator had no authority to debar any trustee/shebait, who has become trustee/shebait as per terms and conditions of the deed of trust, from exercising his right in the trust property or from taking part in the affairs of the trust property and in performing seva puja of the idols consecrated in the trust property or properties.

III. Learned Court below misdirected itself in not taking into account the Schedule –III appended to Act of 1925 and also in not considering that Section 250 of Act of 1925 applies when a person dies, leaving property of which he was sole or surviving trustee or in which he had no beneficial

interest on his account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf. Testator happened to be one of the trustees/shebait in respect of the trust property and hence, provisions of Section 250 of Act of 1925 has no manner of application in the case at hand. Query no. 3 is answered accordingly.

30. Answer to query nos. 4 & 5 :

i. It is trite law that before granting letters of administration, there must be strict proof of the execution of the Will. It is also to be proved that testator was in sound and disposing state of mind and he after having understood nature and effect of disposition, executed the Will out of his own volition and person who has applied for grant of letters of administration has to satisfy the conscience of the Court that suspicious circumstances surrounding the Will have been removed.

ii. In the case before us, both the appellant, respondent and added respondent did not make deliberation on these issues. Rabin in his written statement and affidavit-in-chief claimed that the Will contained distortion of facts. Rabin claimed that in the Will name of husband of Chitra Saha had been incorrectly incorporated as Haran Saha in place and stead of Rampada Saha and Mr. Raut drawing our attention to the letter of testator written to Rabin contends that Rabin was on good terms with the testator.

iii. Incorrect recital in the Will is one of the suspicious circumstances. No evidence regarding actual name of Chitra's husband has been brought on record. In the written statement, Rabin contended that he and Malay raised their voice against the tortures the testator used to inflict upon his daughters and from the letter of testator's wife to Rabin suggests that relationship in between testator and Rabin was not cordial at that point of time and letter written to Rabin by the testator's wife also suggests that relationship in between testator and Chandan was also not cordial.

iv. Mr. Lahiri contends that Will was executed and registered in 1986 and testator died in 1998 i.e. 12 years thereafter and PW-2, attesting witness has proved execution and attestation of the Will.

v. In view of the discussion made hereinabove, we are of the considered view that even if it is proved that the Will was duly executed, the same shall be ineffective.

vi. In such sequence of facts, we are inclined to hold that the learned Court below misdirected itself in granting letters of administration on application filed by a person having no locus standi to file the same, moreso in respect of the Will, legacy of which has lapsed and intention and/or desire of the testator regarding trust property also cannot be given effect to in view of Schedule-III appended to Act of 1925 and Section 250 of Act of 1925 has no manner of application in the case at hand.

vii. It is well-established principle of law that a decision is an authority for what it decides and not can logically be deduced therefrom.

Even in slight distinction on fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards proposition of law upon which reliance has been placed by Mr. Lahiri and Mr. Dawn, however, those judgments are distinguishable on facts. In case of *Durgapada Bera (supra)*, applicant was residuary legatee, in case of *Ishwardeo Narain Singh(supra)*, question was raised whether disposition of the property in favour of Thakuji (idol) is void for uncertainty, in case of *Ramchandra Ganpatrao Hande @ Handege (supra)*, question centred around the action was as to whether testamentary Court can pass interim order to protect the estate left by the deceased, in case of *Delhi Development Authority (supra)* testator purchased the property in a public auction and died without making any construction on the plot. Applicant applied for substitution of his name in place of testator on the strength of the Will and DDA asked him to pay 50% of unearned increase as per terms and conditions stipulated in the lease deed and hence, the applicant filed writ petition, in case of *V. Prabhakara (supra)* question was out of two Wills, Ext.- P-4 and Ext.- D-1, which was the genuine ?, in case of *M.S. Premanand (supra)*, issue was raised that testator had no absolute interest in the property bequeathed under the Will, letters of administration was granted holding that testator had only one-fourth share in the property. It was held that letters of administration should be granted without limiting it to any particular share of the property. In case of *Venkata Reddy & Ors. (supra)*,

father of the appellant was adjudicated an insolvent. His one-third share was put up for auction and was purchased by one Karuppan and then again his two-thirds share was purchased by same person in auction and then appellants filed one partition suit claiming that property belonged to joint family property.

31. *Ex consequenti*, the appeal succeeds. Judgment impugned herein is set aside. The L.A. Case no. 30 of 2010 which was subsequently renumbered as O.C. no. 21 of 2014 is dismissed. Parties to bear their own costs.

32. Let a copy of this judgment along with LCR be sent down to the learned Court below forthwith.

33. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)