

26.06.2023
Item No.46
Ct. No.652
CHC

C.O. 3238 of 2017

**Sri Santi Gopal Saha
Vs.
Jatin Mondal & ors.**

Mr. Sanjoy Mukherjee,
Mr. Arghadip Das
...for the petitioner

Mr. Abhirup Chakraborty
...for the opposite parties

Affidavit-of-service filed in Court be taken on
record.

This is an application under Article 227 of the Constitution of India against order dated 23rd March, 2017, passed by the learned Court of District Delegate, South 24 Parganas, Alipore in Act XXXIX, Case No.133 of 2015(P).

Petitioner's case is that the petitioner being executor filed an application for grant of probate of the Will made and published by one Smt. Amiya Saha. By virtue of the said Will the testator, since deceased, bequeathed her properties described in the said Will to Smt. Mina Rani Saha and two others and the said testator, namely, Smt. Amiya Saha died on 04.12.2010 and her husband predeceased her and they have no issue. The probate petition filed before the learned District Delegate at Alipore is being Probate Case

No.133 of 2015. Petitioner further submits that necessary citation including special citation has been published.

After publication of citation the opposite parties filed an application wherein they have contended that they want to file objection and for that they require to get the certified copy of documents and unless they get the certified copy from the court below they are not in a position to file the objection and accordingly, made a prayer before the court for passing order so that after getting certified copies of document, opposite parties can contest the said Probate Proceeding after filing objection.

However, learned court below treating the said petition as objection has made the probate proceeding contentious and returned the plaint for filing the same before the appropriate forum without assigning any reason whatsoever in the order.

Learned counsel appearing on behalf of the opposite parties contended that it is fact that opposite parties have not yet filed objection before the court below disclosing grounds for objection and the impugned order appears to be premature.

I have gone through the petition dated 05.01.2017 as well as the order impugned. It is palpably clear from the order that order is very much cryptic and is not supported by any reason as to why

the court below has treated the said proceeding as contentious when the said application simply discloses the opposite parties' intention to file objection and no such objection has been filed before the Court, mentioning grounds of objection.

Considering the facts and circumstances of the case, the order impugned dated 23rd March, 2017 is hereby set aside.

C.O. 3238 of 2017 is allowed.

However, this order will not preclude the opposite parties herein to file objection, if any, before the court below and if any such objection is filed, the court below will decide fate of such objection in accordance with the law without making any further reference to this Court.

(Ajoy Kumar Mukherjee, J.)