

11.12.2023  
Sl. No. 21  
Court No.2  
Sandip

**In the Calcutta High Court  
Circuit Bench at Jalpaiguri  
Appellate Side**

C.O. 135 of 2023

*Sibabrata Das*  
*vs.*  
*Jaba Sarkar & Ors.*

Mr. Bikramaditya Ghosh,  
Mr. Debajit Kundu ... for the petitioner

The order dated December 08, 2023 requires correction of typographical error. The word '*Sri*' appearing in the fourth line of the first paragraph of the said order be substituted by the word '*Late*'.

The department is directed to carry out the necessary correction in the said order to the extent indicated above and also in the certified copy of it, if already supplied to the parties. The other portion of the said order shall remain unaltered.

The named executor of the alleged last Will and testament of the one Nriprendra Chandra Das is the petitioner of the instant application under Article 227 of the Constitution of India, which is directed against the Order No. 107 dated July 11, 2023 passed in Title Suit (Probate) No. 07 of 2009 hereby the learned Trial Judge has rejected the prayer of the petitioner for re-examination of PW<sub>2</sub>.

Citation was issued to the opposite parties as they are the near relations of the testator, though on the objection of the daughter of the testator, the opposite party no. 1 herein, the prayer for grant has become contentious but none of the opposite parties are contesting the suit at present, it is running ex-parte against them.

Sri Udayan Chowdhury, the PW<sub>2</sub> though has proved the Will being one of the attesting witnesses of it but the plaintiff intends to

re-examine the said witness to put a question to him mentioned in the application.

The learned Trial Judge has rejected the said prayer of the petitioner on the ground that such re-examination is aimed to fill up the lacuna but it does not appear so inasmuch as the Will has already been proved, in absence of any challenge to the said proof, the question of filling up the lacuna does not arise at all, particularly when the question proposed to be put to the said witness is relating to the attestation of the said Will that too, by way of abundant caution.

The order impugned therefore is not sustainable and is accordingly set aside, the application filed by the petitioner for re-examination of the PW<sub>2</sub> on recall is allowed.

The plaintiff is permitted to put the question mentioned in the application to the PW<sub>2</sub>. The learned Trial Judge shall permit such re-examination on the next date fixed in the suit.

The suit is pending since 2009, the learned Trial Judge is requested to expedite the disposal of it.

C.O. 135 of 2023 is allowed with the above terms without any order as to costs.

Parties to act on the server copy of the order duly downloaded from the official website of the Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

**(Biswajit Basu, J.)**