

16.07.2024
Sl. No.11
SS

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A.T. 3 of 2024
With
IA No. CAN 1 of 2024

Sri Dhiman Biswas
Vs
Utpal Biswas & anr.

Mr. Swapan Kumar Paul
Mr. J. R. Mukherjee
... for the appellant

Mr. Siva Prosad Ghosh
Mrs. Soma Biswas
... for the respondents

1. Affidavit-in-opposition and affidavit-in-reply thereto filed by the respective parties are taken on record.
2. The present appeal and the application are directed against the order dated 14.09.2023 passed by the Additional District Judge, Fast Track Court, Ranaghat, Nadia. The court had dismissed the two objections raised by the present appellant/defendant in the said suit regarding the suit being not in proper form and also an objection that he was not made available the original Will. The court has found that the original suit to be presented in the proper form and has observed that there is no impediment for the objector to obtain the certified copy of the Will.

3. Learned Counsel for applicant relying on the application submits that he has made an application for certified copy of the Will on 11.10.2023 but the same was not supplied to him.

4. Learned Counsel for the respondents has drawn the attention of this Court towards the proceedings in the probate case dated 21.02.2024 from which it is apparent that the present appellant has cross-examined the P.W.1 at length. The probate proceedings therefore, are now at an advanced stage and we are informed that the attesting witnesses have next been called.

5. From the proceedings dated 21.02.2024 we find that the appellant has participated in the probate proceedings conducted cross-examination at length. Even otherwise, we do not find any infirmity in the order passed by the court, which is under appeal in the present proceedings and so far as non-availability of the certified copy of the Will is concerned, there is no material for this Court to arrive at a conclusion that till date it has not been made available to the petitioner.

6. We, however, take note of the fact that the learned court in the order dated 14.09.2023 under appeal has observed that there is no legal impediment for the objector to obtain the certified copy of the Will.

7. In view thereof, it is open to the present appellant to obtain certified copy of the Will, if the same has not been made available till date.

8. In view of the fact that the proceedings are now in an advance stage and the fact that the appellant is participating in the proceedings and has in fact, conducted cross-examination at length, we do not find any infirmity in the order under appeal, the appeal and the application are disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)