

13.02.2024
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Ct. no. 652
sb

CO 788 of 2018

Abani Bhusan Mukherjee
Vs.
Smt. Nibedita Mukherjee & Anr.

Mr. Sounak Bhattacharya
Mr. Abhirup Halder
Mr. Pronojit Roy ...for the Petitioner

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee
...for the Opposite parties

This is an application under Article 227 of the Constitution of India directed against order no. 13 dated 12th February, 2018 passed by the learned Additional District Judge, 3rd Court, Alipore in O.S. No. 25 of 2017. By the impugned order, learned court below has been pleased to reject the petitioner's application under Order 1 Rule 10(2) of the Code of Civil Procedure.

The petitioner contended that the property involved in the proceeding, originally belonged to Haradhan Halder, since deceased and he executed his last will dated 8.5.2012 appointing the petitioner herein as sole executor. One of the beneficiary of the said will Smt. Nibedita Mukherjee initiated aforesaid proceeding being O.S. 25 of 2017 for granting letters of administration against Smt. Chandrani Saha.

The petitioner herein in the said proceeding filed application under Order 1 Rule 10(2) read with Section 151 of the Code for impleading him in the category of the defendant. In the said application, the petitioner categorically stated that it is the admission of the opposite party herein that the petitioner is the sole executor and also one of the beneficiaries of the said will in respect of which the opposite parties herein have applied for letters of administration. Accordingly, he has direct interest in the proceeding and he is a necessary and proper party and his presence is necessary for proper adjudication of the dispute.

The opposite party no. 1 herein filed written objection against the said application.

It is alleged by the petitioner herein that the learned court below without considering the facts and circumstances of the case, has been pleased to reject the application under Order 1 Rule 10(2) of the Code as well as the petitioner's prayer for stay of the proceeding.

Learned counsel for the petitioner in support of his prayer for adding him as a party to the proceeding has relied upon following judgments:

- i) Parimal Kr. Das & Ors. Vs. Prasun Kr. Das, reported in (2004) 2 CLJ (Cal) 488,
- ii) (Thoppai) Venkataramier Vs. A. Govindarayalier, reported in AIR 1926 Madras 605,

iii) Sailabala Dasi Vs. Baidya Nath Rakshit and another, reported in Air 1928 Calcutta 580.

Learned counsel for the opposite parties submits that the petitioner herein has renounced the executorship and for which the letters of administration proceeding is not at all required to be heard in presence of petitioner. Referring the relevant provisions of Indian Successions Act, 1925, he submits that though it is not in dispute that the petitioner herein is the sole executor of the will and he is also one of the beneficiaries of the will but still he is not a necessary party or proper party since he has renounced from the executorship. Accordingly, he has prayed for dismissal of the present application contending that ultimate finding of the court below does not call for interference.

I have considered the submissions made by both the parties. On perusal of the documents filed by the opposite parties, it appears that notice to show cause in the form of citation was sent to the petitioner herein by the court below on 17.11.2017 wherein the petitioner herein was called upon to inform the court whether he accepts executorship being appointed as such in the will or renounce the executorship by 20th November, 2017 and the court below further reminded him that his silence will be considered as his renunciation of the executorship. It further appears from the process

server's report that the petitioner herein refused to accept the aforesaid notice to show cause and for which the process server has served the said show cause notice by affixing a copy thereof in a conspicuous place of his house and thereby it was served upon him.

Learned counsel for the opposite parties further brought my attention the Order no. 11 dated 14.12.2017 wherefrom it appears that after service of said show cause notice, the present petitioner/executor of the will filed an application before the court praying for dismissing the suit on the ground stated therein.

It further appears from the petitioner's application under Order 1 Rule 10(2) of the Code that the petitioner in support of the said application contended that being executor and beneficiary of the will, he has direct interest in the instant proceeding as well as the subject matter of the will and as such his presence is necessary for proper adjudication of the instant proceeding and in the next paragraph, he further contended that for proper adjudication of the dispute in between the parties and to adjudicate the capacity of the testator namely, Haradhan Halder, the executor of the said will in question i.e. the petitioner is a necessary party and in his absence, this court may not be capable of making proper findings.

In the said application or in his prayer for dismissal of the suit, it does not appear that he had

ever challenged the legality or validity of the will or he had ever challenged appointment of his executorship in connection with said will. Section 229 of the Indian Succession Act, 1925 is applicable only when a person appointed as an Executor has not renounced the executorship and in that event the letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship. But if the executor after being cited does not response within the time mentioned in the citation, it amounts to renunciation and there is no bar for the court to grant letters of administration to the person entitled to administration.

In the present case, the citation was issued by court to accept executorship but the petitioner herein failed to respond as per the form prescribed and as such, Section 231 comes into picture which states if an executor renounces or fails to accept the executorship within the time limit for the acceptance or refusal thereof, the will may be proved and the letters of administration with a copy of the will may be granted to the person who would be entitled to administration in case of intestacy.

Since in the present context, the petitioner has not challenged the will nor has challenged his appointment as an executor of the said will and chooses

not to answer the citation and also considering the limited scope of a probate court or letters of administration that he is basically concerned to deal with the genuineness of the will and about the appointment of the executor of the will, which is not under challenge in the present context, I find that the present petitioner is neither a necessary party nor a proper party for the said proceeding. The case law cited by the petitioner is factually distinguishable.

In view of above, the ultimate finding of the court below does not call for interference. C.O. 788 of 2018 is accordingly dismissed.

The court below is directed to make every endeavour for expeditious disposal of the impugned proceeding and to make his best efforts to conclude the entire proceeding preferably within a period of six months from the date of communication of the order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)