

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 968 of 2024

Supriya Bhattacharjee & Ors.
Versus
Salil Kumar Bhattacharjee

Mr. Kazi Safiullah
Ms. Nayaab Mulla
Mr. Sib Nath Ganguly
... For the petitioners.

Mr. Dyutiman Banerjee
Mr. Vishal Mallick
... For the respondent.

1. Leave is granted to the petitioners' advocate on record to correct the cause title.
2. Challenging the order dated 30th January, 2024 passed by the learned Civil Judge, (Junior Division), Additional Court, Sealdah, South 24-Parganas in Title Suit No. 1094 of 2018 thereby dismissing the application filed under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code), the instant revisional application has been filed.
3. Mr. Safiullah, learned advocate appearing in support of the aforesaid application by drawing attention of this Court to the judgment delivered in the contested probate proceedings passed by the learned Additional District Judge & Sessions Judge, 5th Court, Alipore, South 24-Parganas on 12th April,

2016, in Original Suit No. 12 of 2015, would submit that claim made by the opposite party in a proceeding under Section 278 of the Indian Succession Act, for grant of Letters of Administration along with the copy of the Will in respect of the last Will and testament made and published by Dr. Sailendra Kishore Bhattacharya, the father of the opposite party having not succeeded, an appeal had been filed before this Court which was registered as FAT 349 of 2016. It is submitted that during the pendency of the aforesaid appeal, the instant suit has been filed by the opposite party inter alia, praying for a declaration that the opposite party /plaintiff is the owner of the 1/3rd share of the undivided suit property which is a property left behind by the deceased Dr. Sailendra Kishore Bhattacharya, as also for other reliefs.

4. Since, according to the petitioner, the subject matter of the probate proceeding and the subject matter of the subsequent suit being T.S. No.1094 of 2018 are the same, an application under Section 10 of the Code read with Section 151 thereof was filed before the learned Court. By an order dated 30th January, 2024 the learned Civil Judge, (Junior Division), Additional Court, Sealdah, South 24-Parganas by taking note of the provisions contained

in Section 10 of the Code and noting that the same only applies to a suit of the same nature between the same parties relating to the same matter in issue had rejected the application filed under Section 10 of the Code. Challenging the aforesaid order of rejection, the present revisional application has been filed.

5. Learned advocate representing the petitioner, however, after arguing the matter for some time would submit, since the appeal has been withdrawn, the cause of action for filing application under Section 10 of the Code may no longer survive. As such, he does not want to proceed with the matter.
6. Having regard to such submissions as to whether an application under Section 10 of the Code is at all maintainable in respect of a grant of probate which is in the nature of judgment *in rem* and subsequent suit filed by the opposite party for declaration of his title and share in the property though having become academic in the light of the submission made above, however, since the matter has been argued, I find it my duty to decide the same. It is necessary to note that an order passed in a probate proceeding or for that matter in a proceeding relating to grant of Letters of Administration, the order not only binds the parties but the world at

large and is considered to be a judgment in rem. The issues that fell for consideration in the present probate proceeding being O.S. No 12 of 2015 was whether the last Will and testament dated 22nd February, 1983 of the testator Dr. Sailendra Kishore Bhattacharya, since deceased, was validly executed and attested, and as to whether the plaintiff was entitled to get Letters of Administration along with copy of the Will. Insofar as the instant suit is concerned, the plaintiff/ opposite party is seeking declaration of 1/3rd interest as also for other reliefs. The same also do not remotely touch upon the issues which fell for consideration in the proceeding for grant of probate. In fact the plaint case proceeds on the basis of intestate succession.

7. Having regard thereto, I am of the view that the learned Judge had rightly rejected the application filed under Section 10 of the Code. There is no irregularity in the order.
8. The parties at this stage would submit that the instant suit is pending since the year 2018, as such appropriate direction may be passed for expeditious disposal thereof.
9. Having regard thereto and considering the fact that the instant suit is pending since 2018 and is at the stage of taking evidence of the plaintiff, I am of the

view that the learned Judge should proceed with the suit expeditiously and dispose of the same preferably within a period of one year from the date of communication of this order, without granting any unnecessary adjournment to any of the parties.

10. With the above observations and directions, the revisional application is disposed of.

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

(Raja Basu Chowdhury, J.)