

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O 1972 of 2019

With

CAN 1 of 2022

Amitabha Saha & Anr

Vs

Sriparna Biswas

For the Petitioners : Mr. Debasish Roy

For the Opposite Party : Mr. Hasnuhana Chakraborty
Ms. Vinay Kumar Purohit

Heard on : 31.01.2024

Judgment on : 16.02.2024

Ajoy Kumar Mukherjee, J.

1. This application has been directed against order dated February 16, 2019 passed by the learned District Delegate at Alipore in Letters of Administration case no. 336 of 1984. One Anilananda Saha was the owner of the flat situated at the 2nd floor of premises no. 176 Rasbihari Avenue. Said Anilananda by the last will and testament bequeathed all his share in the said flat to his sister-in-law Mrs. Sukumari Saha and her son Paramananda Saha with a stipulation that in case said Paramananda does not marry and dies without issue, the property will revert back to the

present petitioners. The testator Anilananda died on 25th July 1983 and consequent to the death of the testator, aforesaid Paramananda and Sukumari applied for Letters of Administration of the said will and testament being Act XXXIX case no 336 of 1984 (L.A.) During pendency of the said proceeding, aforesaid Sukumari Saha expired on 09/07/1987. By order no.101 dated 11/09/2008, learned District Delegate was pleased to grant Letters of Administration in favour of the said petitioner Paramananda Saha @ Kanu Saha upon filing the court fee Rs. 10.000/. Thereafter Paramananda filed administrative bond under section 291 of the Indian succession Act 1925 and the court accepted the said bond. Paramananda filed court fee Rs. 10,000/- on 17.09.2008 and the Letters of Administration was issued in favour of Paramananda on that date.

2. Thereafter Paramananda died intestate leaving behind his wife Sriparna Biswas as his sole surviving heir and legal representative. Thereafter the present petitioners Amitabha Saha and Tapas Kumar Saha filed application under Order XXII, Rule 3 read with section 151 of the Code of Civil Procedure in the aforesaid proceeding being Act XXXIX case No.336 of 1984 praying that the present petitioners be substituted in place of deceased Paramananda, in terms of the will and to permit them to deposit adequate court fees for issuance of Letters of Administration along with the copy of the will dated 08.06.1981 left by aforesaid testator.

3. The court below by an order dated 20th August, 2015 was pleased to allow the present petitioners to be substituted in place of deceased Paramananda. After substitution present petitioners filed amended probate application incorporating their names and prayed for grant of Letters of

Administration and to permit them to deposit the maximum court fees of Rs. 50,000/-. Thereafter present petitioners filed maximum court fees of Rs. 50,000/- and learned District Delegate by an order dated 19.11.2015 directed to issue certificate accordingly.

4. Petitioners thereafter filed an application for refund of the court of Rs. 50,000/- but thereafter they have not pressed the application for refund of court fee.

5. Thereafter Learned district delegate by an order dated 12.06.2017 directed the petitioners to file the certificate which was issued on 17.09.2008 in favour of Paramananda. Learned advocate on behalf of the petitioner by a letter dated August, 9 2015 requested the opposite party herein/widow of Paramananda to hand over the original letters of administration to her to enable the petitioners to comply with the aforesaid order dated 12th June, 2017. The learned advocate on behalf of the opposite party by a reply dated 11th August, 2017 allegedly expressed his inability to cooperate with the petitioners. Aforesaid Sriparna Biswas wife of Paramananda then filed an application for recalling of all the orders which were passed by the learned court after the grant of Letters of Administration dated 17.09.2008 by the learned District Delegate. Present petitioners contested the said application by filing written objection denying all material averments made in the said application

6. Aforesaid application for recalling of the orders together with its written objection came up for hearing before the learned District Delegate. and learned court by the impugned order has been pleased to allow the said application for recalling orders with the observation that the court is not

empowered to hear contentious issue and the same cannot be raised by the objector after the order of the grant by the appropriate authority and since the court below has become *funtus officio* after passing the order of the grant of Letters of Administration in favour of Paramananda, he recalled all the orders which were passed after the grant of letters of administration dated 17.09.2008 and liberty was given to the petitioners to withdraw the stamp duty of Rs. 50,000/-

7. Being aggrieved by the said order Mr. Debasis Roy learned counsel appearing on behalf of the petitioner submits that the court below acted illegally and with material irregularity in holding that the dispute between the parties is contentious while he failed to consider that the order granting probate in favour of Paramananda has not been challenged by the petitioner and as such there is no impediment on the part of court below to direct the opposite party herein to file the letters of administration granted in 2008. Learned court below acted illegally in holding that the said court has become *funtus officio* after grant of Letters of Administration infavour of Paramananda in as much as the same court by an order dated November, 19,2015 directed to issue probate upon payment of court fees of Rs. 50,000/- and since the opposite party prayed for recalling the said order the court has jurisdiction to decide such application.

8. He further submits that according to the will of late Anilananda, if Paramananda does not marry and dies without any issue, the property will revert to the petitioners herein and since Paramananda died issueless the property reverted back to the petitioners in terms of the said will dated June, 8, 1981. Accordingly on the death of testator Anilananda, the first

part of the will came into operation and learned District Delegate, on the basis of application filed by Paramananda and Sukumari issued Letters of Administration on 11th September, 2008 only on condition that Paramananda is to administer the same. The Letters of Administration was issued to Paramananda by making valuation of the case property on conjecture and surmise and the Letter of Administration was issued on a court fee of Rs. 10,000/- though by the West Bengal Court fees (Amendment) Act, 2000 the maximum court fee leviable under clause (a) or clause (b) is Rs. 50,000/-. Since the Letters of Administration granted on September, 11 2008, there cannot be any scope of administering the property on the basis of said Letters of Administration which was given on a stamp paper valued at Rs. 10,000/- only on the basis of self-declaration by the applicants. Moreover the condition imposed at the time of issuing the Letters of Administration by the learned District Delegate, Alipore, have not been complied with by the deceased Paramananda.

9. He further submits that a will is the last wish of the testator and it cannot be altered by any subsequent act. Since late Sriparna Biswas does not have any child by aforesaid Paramananda, she does not have any right over the property. However, after the death of Sriparna the opposite party herein namely Srimati Kanar Sengupta cannot and does not have any right over the property mentioned in the will. In fact the legal right of Paramananda to the property ceased with his demise immediately and the present opposite party have no locus standi to contest the present application. Learned court below acted illegally and with material irregularity in not considering the scope of the will and he ought not to have

held that the dispute between the parties have become contentious. Accordingly petitioners have prayed for setting aside the order impugned.

10. Mr. Chakraborty learned counsel appearing on behalf of the opposite party submits that from the order impugned it transpires that learned court below had correctly appreciated the law applicable to the instant case and rightly held that the court below have become *funtus officio* after the passing of the order of the grant of Letters of Administration in favour of Paramananda Saha, since deceased and was not empowered to hear any contentious issue which are to be raised by the petitioner before the appropriate authority. Infact Letters of Administration was granted in favour of Paramananda on September, 11, 2008 and thereafter the court fees then payable had been duly deposited by Paramananda and the entire estate of the testator had been duly administered by Paramananda since deceased. After the grant of letters of administration in favour of Paramananda, since deceased there is no scope for any substitution and as such it is not sustainable in law.

11. Mr. Chakraborty further submits that the jurisdiction of court granting probate or letters of administration is limited and is confined only to the consideration of the genuineness of the will. Adjudication of right title interest of any person over that property is beyond the domain of the probate court. Accordingly there is no infirmity in the order impugned and there is no basis for determining the same by the petitioners after the letters of administration had been granted in favour of Paramananda, since deceased. The entire estate had been administered by him and there is no scope for objecting to the same in the probate proceedings. In such view of

the matter opposite party submits that the order impugned is justified and does not call for any interference. Accordingly he has prayed for dismissal of the revisioal application.

12. The short point involved in the present application is, after granting of Letters of Administration in favour of Paramananda in the year 2008, whether Probate Court has become *funtus officio* and can deal with in the said proceeding the question of reversion of title to the petitioners in terms of will and for that matter whether can issue fresh letters of Administration in their favour in the changed circumstances revoking the earlier one and for that purpose whether petitioners can pray for their substitution.

13. At the outset it is required to be reiterated that the Will executed by testator Anilananda Saha is not in dispute and the petitioner herein never challenged the genuineness of the said Will executed by Anilananda Saha. Furthermore, even the Letters of Administration granted in favour of Paramananda in the year 2008 is not the subject matter of challenge in the present application.

14. According to Section 41 of the Indian Evidence Act, 1872 the grant of Letters of Administration is a *judgment in rem* and can only be set aside on the ground of fraud or want of jurisdiction. In fact with regard to judgment of Probate Court about execution of Letters of Administration in favour of Paramananda, operates as a *judgment in rem* only in respect of the issue as to the execution and attestation of the Will and as to the appointment of executor.

15. In the present context the petitioners have filed the substitution application with a view to continue probate proceeding initiated by

Paramananda and other where probate has already been granted to Paramananda but interpreting the Will that it confers right to them, with the death of Paramananda, who died issueless. But the right under the Will based on interpretation of the various terms contained in the Will are matters on which the Probate Court has no jurisdiction. The question whether petitioners have acquired absolute right over the property bequeathed, depending upon construction of the terms contained in the will, are not matters falling within the exclusive jurisdiction of a probate court.

16. The conclusiveness of Probate Court is only with relation to the validity of the Will, which is not in dispute in the present context. The jurisdiction of the Probate Court to interpret the Will or the terms contained thereunder i.e. whether with the death of Paramananda the property in question has reverted to the petitioner or not is beyond the realms of the Probate Court.

17. In view of above after the grant of Letters of Administration in favour of Paramanand, since deceased, there is no scope for any substitution of the petitioners and in fact court below has become *funtus officio* after granting letter of Administration in favour of Paramananda.

18. Accordingly, I do not find any reason to take a different view nor I find any ground being made out by the petitioner to upset the decision of the Court below.

19. In such view of the matter, C.O. 1972 of 2019 is dismissed. Connected Application are accordingly disposed of.

20. However, this dismissal order will not preclude the petitioner from seeking their remedy before the appropriate forum in connection with their alleged title in the suit property, subject to the relevant provisions of law.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)