

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2405 of 2023

Tirth Nath Yadav
Vs.
Partha Samanta & Anr.

Mr. Saptansu Basu, Sr. Counsel
Mr. Partha Pratim Roy
Mr. Rahul Karmakar
Mr. Gulam Karim Chowdhury
... For the petitioner

Mrs. Sabita Mukherjee Roy Choudhury
Mr. Debnath Ganguly
Mr. Sanket Dan
Ms. Sneha Singh
Mr. Supriyo Dutta
... For the opposite party No.2

1. This revisional application has been filed assailing the order dated 2nd May, 2023 passed in connection with O.C. No.21 of 2018 wherein the learned Judge, Bench-V, City Civil Court, Calcutta allowed an application filed by one Debika Chatterjee/opposite party no.2 herein claiming herself as a person having agnatic relation with the deceased Swapan Kumar Mallick, the testator of the Will.

2. The application was contested by the petitioner contending, inter alia, that according to Will, Swapan Kumar Mallick had no near relatives prescribed either in Class-I or Class-II under the Hindu Succession Act, except his wife. Learned Judge considered one application filed by Debika Chatterjee/opposite party no.2 herein who claims

to be in an agnatic relation with the deceased Swapam Kumar Mallick, ignoring the contention advanced on behalf of the petitioner.

3. Learned counsel appearing on behalf of the petitioner has drawn my attention to the provision of Order XXII Rule 5 of the Code of Civil Procedure and submits that necessary enquiry ought to have been made by the learned Judge before passing any order on the issue.

4. Learned counsel appearing on behalf of the opposite party no.2 has submitted that albeit there is no specific reason assigned in the order itself but the opposite party no.2 has agnatic relation with Swapam Kumar Mallick.

5. Considering all facts and circumstances, I am of the opinion that the learned Judge relied upon a genesis prepared in a white paper filed on behalf of Debika Chatterjee/opposite party no.2 herein, and passed an order allowing addition accordingly without making any sort of enquiry.

6. On that score, I am of the view that the order passed by the learned Judge suffers from absolute illegality as it was not supported by any reason, that too without making any enquiry regarding the issue before him.

7. Regard being had to the above, the observation with regard to the relationship between Debika Chatterjee/

opposite party no.2 herein and the deceased Swapan Kumar Mallick stands set aside.

8. Learned Judge is requested to make an enquiry with regard to the claim of Debika Chatterjee/opposite party no.2 herein in terms of written objection filed on behalf of the petitioner after giving an opportunity to the parties to the proceedings to adduce evidence, if necessary.

9. Learned Judge is also requested to dispose of the matter as expeditiously as possible.

10. With the aforesaid observation, the revisional application, being CO 2405 of 2023, stands disposed of.

11. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)