

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

HEARD ON: 27.03.2024

DELIVERED ON: 27.03.2024

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

C.O. 3081 of 2023

Samir Halder

Vs.

Dipak Halder

Appearance:-

Mr. Biswaroop Biswas

Mrs. Atryeee De (Ganguly)

.....for the Petitioner

Mr. Debdipto Banerjee

.....for the Opposite Party

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The order dated 27th July, 2023 passed by the learned Civil Judge, (Junior Division), Additional Court, Sealdah in Title Suit No. 247 of 2019 is under challenge in this application under Article 227 of the Constitution of India at the instance of the plaintiff.
2. By the order impugned, the application under section 151 of the Code of Civil Procedure praying for stay of all further proceedings of Title Suit No. 247 of 2019 till the disposal of the Revocation Case No. 1 of 2019 was allowed.
3. Mr. Biswas, learned advocate appearing for the petitioner submits that the suit for recovery of possession, upon revocation of license, could not have been stayed till the disposal of the revocation proceeding as the nature and character of the two proceedings are not identical. He further submits that

the suit for eviction being an earlier proceeding cannot be stayed under section 10 of the Code of Civil Procedure on the ground of pendency of a revocation proceeding.

4. Mr. Biswas places reliance upon a decision of a coordinate Bench delivered on **23rd August, 2010** in **C.O. 1895 of 2010** in support of his contention that eviction proceeding cannot be stayed during pendency of the revocation proceeding. He also places reliance upon a decision of a coordinate Bench in the case of ***Jayanta Kumar Mondal & Ors. vs. Brojo Gopal Dalal & Anr.*** reported at **2007 (1) CLJ (Cal.) 725** in support of his contention that the issues in the suit for eviction and the revocation proceeding being different, Court cannot pass an order of stay of the eviction suit in exercise of powers under section 10 of the Code of Civil Procedure.
5. Mr. Banerjee, learned advocate appearing for the opposite party places reliance upon an order of a coordinate Bench dated **13th February, 2012** in **C.O. 3802 of 2011** in support of his contention that the eviction proceeding should be stayed till the revocation matter is decided. He also places reliance upon a decision of an Hon'ble Division Bench of this Court in ***Jugometal Trg Republike vs. Rungta and Sons Private Limited*** reported at **AIR 1966 Cal. 382** in support of his contention that in cases where section 10 of the Code of Civil Procedure is not applicable, Court has the power to pass an order of stay in exercise of its powers under section 151 of the Code of Civil Procedure.
6. Heard the learned advocates for the parties and perused the materials placed.

7. The petitioner herein filed the suit for recovery of possession on revocation of license being Title Suit No. 247 of 2019 before the Court of the learned Civil Judge, Junior Division, Additional Court at Sealdah claiming that the suit property originally belonged to Gobardhan Halder and Smt. Gouri Halder. The petitioner claims that Gobardhan Halder during his lifetime executed a registered will in respect of his $\frac{1}{2}$ share in the property and bequeathed his share to the petitioner and after the demise of the said Gobardhan Halder, he became the owner of $\frac{1}{2}$ share of the suit property by virtue of the grant of probate to the last will and testament of the said Gobardhan Halder.
8. Petitioner further claims that the other co-owner viz. Smt. Gouri Halder, during her lifetime executed a registered deed of gift in favour of the petitioner in respect of the remaining $\frac{1}{2}$ share of the suit property. By virtue of the probate of the will of Gobardhan Halder and the deed of gift executed by Gouri Halder, the petitioner claims to be the absolute owner of the suit property and filed the suit for eviction upon revocation of license.
9. The opposite party herein filed an application for revocation of probate, which was registered as Revocation Case No. 1 of 2019, which is pending before the learned Additional District Judge, Fast Track Court No. 1 at Sealdah.
10. The opposite party herein filed an application under section 151 of the Code of Civil Procedure praying for stay of all further proceedings of the eviction suit till the disposal of the revocation case. Such application stood allowed by the impugned order. Being aggrieved, the plaintiff in the suit for eviction has approached this Court.

11. It has been uniformly submitted by the learned advocates for the respective parties that the eviction suit as well as the revocation proceeding are both pending at the initial stages.
12. The question that arises for consideration is whether the eviction suit should be stayed pending disposal of the revocation case.
13. The petitioner herein is claiming title to the suit property by virtue of the probate of the will executed by Gobardhan Halder as well as the deed of gift executed by Gouri Halder. However, the gift deed executed by Gouri Halder in favour of the petitioner herein is not under challenge. Dismissal of the revocation case may not have any bearing on the title of the petitioner in respect of the suit property in so far as devolution to title by virtue of the Will is concerned. However, if the revocation case is allowed, it may have some impact on the title of the petitioner to the suit property. Therefore, the outcome of the revocation case may have some bearing on the fate of the eviction suit.
14. In C.O. 3802 of 2011, the Coordinate Bench after observing that the finding in the revocation case would have bearing in the eviction proceeding and after noting the concession of the learned counsels appearing for the respective parties that the revocation matter should be disposed of first before any order could be passed in respect of the eviction proceeding, directed that till the revocation matter is decided, the eviction proceeding shall not proceed. The said decision being based on concession by the learned advocates for the respective parties, cannot be said to have laid down a ratio in order to be a binding precedent upon this Court.
15. In C.O. 1895 of 2010, a suit for eviction of a licensee was filed by the executor of a Will during the pendency of the probate proceeding. On such

facts, the Co-ordinate Bench after relying upon a decision of the Hon'ble Supreme Court in the case of ***Binapani Kar Chowdhury Vs. Satyabrata Basu & Anr.*** reported at ***AIR 2006 (SC) 2263*** directed the learned Trial Judge to dispose of the suit in the light of the direction of the Hon'ble Supreme Court in ***Binapani Kar Chowdhury (supra)***.

16. In ***Binapani Kar Chowdhury (supra)***, the suit was filed in the year 1995 and the original plaintiff died in the year 1997 and the first respondent therein came on record as executor and legatee of the original plaintiff in pursuance of an order dated 10th August, 1998. The Hon'ble Supreme Court noted that the evidence had been concluded long ago but, till then the 1st respondent has not obtained the probate of the Will. The Hon'ble Supreme Court also noted that the defendant at the relevant point of time was aged about 74 years old. The Hon'ble Supreme Court further noted that in a suit where validity of a sale deed was questioned had been pending without a decision for more than a decade. On such special facts, the Hon'ble Supreme Court with a view to do complete justice between the parties directed the learned Trial Court, where the title suit was pending to proceed to hear the arguments and deliver judgement in the suit. It was further observed that nothing further will be required if the suit is to be dismissed. But, if the suit is to be decreed, the learned Trial Court should make it clear that the judgement and decree will come into effect only on the 1st respondent obtaining and producing the probate of the Will and till then, the decree should be considered only as provisional and not to be given effect.
17. It is not in dispute that the nature and character of the revocation proceeding and the eviction proceeding are not identical. Mr. Biswas was

right in submitting that a prior suit for eviction cannot be stayed on account of a subsequent revocation proceedings under Section 10 the Code of Civil Procedure. The Hon'ble Division Bench in ***Rungta and Sons (Private) Ltd. (supra)*** has held that even if the case is not covered by the express provision of Section 10 of the Code of Civil Procedure, the Court has the power to act *ex debito justitiae* and to do real and substantial justice for the administration of which alone the Court exists. Therefore, even if Section 10 of the Code of Civil Procedure does not squarely apply to the facts of a given case, the Court in exercise of its powers under Section 151 of the Code of Civil Procedure can pass an order of stay in the interest of justice. In the case on hand, the application was filed under Section 151 of the Code of Civil Procedure and, therefore, this Court is of the view that even if Section 10 of the Code of Civil Procedure may not apply in its strict sense, the provision of Section 151 can be applied to a case of instant nature.

18. The decision in the case of ***Jayanta Kumar Mondal & Ors. (supra)*** did not take into consideration the effect of Section 151 of the Code of Civil Procedure. In view of the Division Bench decision in the case of ***Rungta and Sons (Private) Ltd. (supra)***, this Court is inclined to follow the decision in the case of ***Rungta and Sons (Private) Ltd. (supra)***.
19. In the case on hand as observed hereinbefore, the probate has been already granted and the revocation proceeding is pending. Both the revocation proceedings and the suit for eviction of a licensee are at the initial stages.
20. This Court is, therefore, of the considered view that in order to avoid conflict of judicial decisions on one hand and to expedite the progress of

the pending proceedings, the following order shall subserve the interest of justice.

21. This Court, therefore, holds that the impugned order calls for interference.
22. For the reasons, as aforesaid, the impugned order is set aside. Further proceedings in the eviction suit may continue till the stage prior to the stage of arguments.
23. In the event, the revocation proceeding is not disposed of prior to the eviction suit reaching the argument stage, the further proceedings of Title Suit No.247 of 2019 pending before the learned Civil Judge (Junior Division), Additional Court at Sealdah shall remain stayed till the disposal of the revocation case. In the event, the revocation case is disposed of prior to the eviction case reaching the stage of argument, it will be open to the respective parties to take appropriate steps in Title Suit No.247 of 2019.
24. With the above observations/directions, C.O. 3081 of 2023 stands disposed of.
25. There shall be, however, no order as to costs.
26. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)