

D/L- 13
20.12.2024
Ct. No.-5
Aritra

C.O. 3374 of 2024

Shri Madan Mohan Das
-Vs-
Shri Tarun Pal

Mr. Soumen Kumar Dutta
Mr. Subham Dutta
...for the petitioner

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Anirban Saha Ray
Mr. Abhirup Halder
....for the O.P.

1. Affidavit of service filed today is taken on record.

2. Challenging the order of rejection of an application under Section 10 of the Code of Civil Procedure, 1908 read with Section 151 thereof passed by the learned Civil Judge (Jr. Division), 1st Additional Court, Contai in Title Suit No.80 of 2023, the instant revisional application has been filed.

3. From a perusal of the plaint filed in T.S. No.80 of 2023 by the opposite party it would transpire that the said suit is for recovery of possession by evicting the trespasser, that is the defendant from the suit property.

4. The parties are related to each other. The defendant/petitioner claims that Harish Chandra Pal (hereinafter referred to since deceased), who was at all material point of time owner of the suit property had

during his lifetime executed a Will on January 13, 2015 whereunder the petitioner is a beneficiary. The petitioner claimed to have filed an application for grant of probate of the Will, executed by the deceased, before the Court of the learned District Delegate, 2nd Court, Civil Judge (Senior Division) at Contai, Purba Medinipur, which has been registered as Probate Case No.1 of 2024. According to the petitioner, citations had already been issued.

5. The petitioner would submit that in the event the title suit is decided against the petitioner prior to the conclusion of the probate proceeding. The petitioner shall not be in a position to establish his right as legatee by reasons of the bar provided for under Section 213 of the Indian Succession Act, 1925 (hereinafter referred to as the said Act).

6. Mr. Bhattacharya, learned advocate appearing on behalf of the plaintiff/opposite party would submit on instructions that the opposite party shall contest the probate proceedings. He would, however, confirm the fact that the suit has been filed on the basis of intestate succession on the death of the deceased.

7. Having regard to the above and the submissions made by Mr. Bhattacharya in Court today and noting that there might be conflict of judicial opinion, I direct the learned District Delegate

Contai to take steps for disposal in probate case No.1 of 2024 provided the opposite party files a caveat and contest probate proceeding by filing a written statement within a period of 4 weeks from date. In such event, the learned District Delegate shall forthwith by treating the probate proceeding as a contentious cause transmit the records to the Court of the learned District Judge, Purba Mednipur for the probate proceeding being tried as a suit. In the alternative if no caveat and written statement is filed by the opposite party or by any other person challenging the legality and validity of the Will, the learned District Delegate shall expeditiously disposed of the probate proceeding preferably within a period of 6 months from the date of communication of this order. In so far as, Title Suit No.80 of 2023 is concerned the trial of the same may go on with the participation of the petitioner, however, no final decree be passed prior to disposal of the probate proceeding.

8. Mr. Bhattacharya learned advocate appearing on behalf of the opposite party undertakes to file Vakalatnama in course of the day.

9. With the above observations, the revisional application being CO 3374 of 2024 stands disposed of.

10. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)