

April 2, 2024
Sl. No.A 44
Court No.19
s.biswas

CO 3920 of 2023
Mary Mondal
vs.
Supravat Mondal and others

Mr. Kamlesh Jha
Ms. Srabani Biswas

... for the petitioner

1. The revisional application arises out of an order dated July 21, 2023 passed by the learned Additional District Judge, Fast Track 4th Court, Barasat, North 24 Parganas in O.S. No.25 of 2008.
2. By the order impugned, the learned court rejected an application filed by the petitioner under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure.
3. The petitioner who is an attesting witness of the will of Raju Bala Mondal, claimed that she had not signed the will and was unaware of the same. She further claimed that her mother had not appeared in the court after receiving the citation, and the vakalatnama was also disputed. She had no knowledge of such act of her mother. Thus, she should be allowed to contest the probate proceedings as an heir of a deceased daughter of the testator.
4. The learned court after meticulously going through the records, came to the finding that Lucy Rozario, the mother of the petitioner

appeared before the court by filing vakalatnama on September 26, 2006, but ultimately did not file any objection.

5. After general citation, Lucy Rozario preferred not to object to the prayer for grant of probate. The suit proceeded. The opposite party no.1, i.e., the propounder of the will was also exempted from substituting the heirs of Lucy Rozario, as she was a non-contesting party. The order of the court was not challenged.
6. Relying on a decision of the Calcutta High Court, the learned court rejected the application on the ground that an heir of an uncontesting party in a probate suit, did not have any locus to be added in the proceedings as a party. The petitioner, at best, could be a witness for a contesting defendant and support the case of the defendants with regard to the genuineness of the will. She may also contend that her signature did not appear on the will.
7. I do not find any illegality in the order impugned. The learned court had rightly rejected the application. The decision cited in **Saral Patwar vs. Smt. Sushila Dassi** reported in 1983 (1) CLJ 169, will not help the petitioner in this case for the following reasons:-

a) The mother of the petitioner had not contested the will. She filed her vakalatnaman, but did not file any objection.

b) The executor was exempted from substituting the heirs of the deceased Lucy Rozario by an order of court, which had attained finality.

c) The petitioner was an attesting witness, who was later claiming that the signature was not her own.

d) The petitioner is not in a position to dispute the fact that her mother had chosen not to file any objection in the probate proceeding. The records speak otherwise.

8. The revisional application stands disposed of accordingly.
9. All the parties are directed to act on the basis of the server copy of the order.
10. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)