

JPD-21
Ct No.01
02.08.2024
S.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

FMAT/28/2023
IA NO: CAN/1/2023, CAN/2/2023

PRIYANKA MITRA
VS
SUKLA MITRA AND ORS.

Mr. Bikramaditya Ghosh
Ms. Supriya Singh

...for the appellant

Re.: CAN/1/2023

1. We find from the Vakalatnama annexed at page 25 of CAN/2/2023, which is the connected stay application, that the appellant as well as the opposite parties appeared together through the same learned Advocate before the learned District Delegate against whose order/deemed decree, the present appeal has been preferred.
2. The application before the District Delegate was one under Section 261 of the Indian Succession Act, 1925. Initially, probate had been granted in a non-contentious manner by the District Delegate. As such, we find that there is no

scope of any controversy insofar as the present application or the appeal are concerned.

3. Hence, service on the respondents/opposite parties with regard to the connected applications as well as the appeal is dispensed with.
4. In view of sufficient grounds having been made out in the application, CAN 1 of 2023 is allowed, thereby condoning the delay in preferring FMAT 28 of 2023.

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5. The appeal is taken up for hearing, along with the connected stay application, for admission and adjudication. The limited scope of the appeal is whether the District Delegate, Siliguri had jurisdiction under Section 261 of the 1925 Ac, to grant the prayer sought by the appellant.
6. The brief facts of the case which are germane in the context are that one Smt. Kalpana Mitra (since deceased), the testatrix, had executed a Will, with regard to which probate was initially granted without contest.
7. In the body of the said Will, the property sought to be bequeathed was mentioned as pertaining

to Khatian no.1946 whereas in the Schedule of the Will, the same was mentioned as Khatian no.1954. Initially, probate was granted in respect of the property mentioned in the Schedule pertaining to Khatian no.1954 whereas subsequently the present application under Section 261 of the 1925 Act was filed for rectification of the probate to the extent that the Khatian number should be depicted as 1946.

8. By the impugned order/deemed decree, the District Delegate proceeded on the premise that the powers of the District Delegate under Section 152 of the Code of Civil Procedure is akin to that under Section 261 of the Indian Succession Act, 1925, limited to clerical and arithmetical errors or errors merely with regard to names, description of the deceased, etc.
9. However, a bare reading of Section 261 indicates that the errors in descriptions contemplated therein are not restricted to the names or description of the testator/testatrix, but also extend to the description of the property sought to be conveyed.

10. In the case of interpretation of a Will, the cardinal and paramount principle is to give utmost effect to the intention of the deceased.
11. As such, a liberal interpretation of Section 261 of the 1925 Act ought to have been given by the District Delegate.
12. We are, thus, of the opinion that the District Delegate had full jurisdiction under Section 261 of the Indian Succession Act, 1925 to deal with the rectification sought in the probate by the appellant on merits.
13. However, since we do not want to usurp jurisdiction and to curtail a forum of challenge, it would be only appropriate if we remand the matter to the District Delegate with the finding that the District Delegate has jurisdiction to decide the prayer of the appellant for rectification of the probate.
14. However, it is made clear that the appellant/petitioner will be at liberty before the District Delegate, in order to substantiate her claim, to produce contemporaneous or other documents, either relating to the title of the testatrix and/or any other document or oral evidence to prove the actual intention of the

testatrix, to the extent whether it was to bequeath the property pertaining to Khatian no.1946 or Khatian no.1954.

15. FMAT 28 of 2023 is, thus, admitted and disposed of in the light of the above observations by setting aside the impugned order/deemed decree and directing the District Delegate to proceed on the promise that it has jurisdiction and to rehear the matter as expeditiously as possible, preferably within four months from the date of communication of this order to the learned District Delegate, in the light of the observations made above. For such purpose, the learned District Delegate shall provide opportunity to the appellant to adduce further oral or documentary evidence as indicated above.

16. No order as to costs.

17. The application being CAN 2 of 2023 is, accordingly, disposed of as well.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)