

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO. GA/2/2024
WITH
TS/8/1977
In
APOT/66/2024

IN THE GOODS OF
SMT SHYAMA SUNDARI DASSI DECEASED AND SRI RAJIB KUMAR DAS
Vs
SADHANA GHOSH AND ORS.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 20th November, 2024.

Appearance:

Mr. Arijit Dey, Adv.
...for the appellants.

Mr. Asit Baran Raut, Adv.
Mr. Bimalendu Das, Adv.
Mr. Tuhin Subhra Raut, Adv.
Mr. A.K. Chowdhury, Adv.
...for the respondents.

Re.: IA NO.GA/2/2024

The Court: This is an application for modification of the order dated June 28, 2024. It appears that the Coordinate Bench in which one of us (Biswaroop Chowdhury, J.) after hearing learned Counsel for the parties have passed an order after a contested hearing. The order was pronounced in open Court.

On July 26, 2024 this application has been filed for expunging the following paragraph:

“Considering all the facts, especially that the probate proceedings have been concluded in favour of the predecessor-in-interest of the appellant, the property in question has vested in the executor and he would be entitled to receive the income therefrom for distribution to the legatee/legatees of whom the appellant is one of the legatees, we direct that initiation or continuation of the criminal proceedings in terms of the order dated 6th February 2024.”

On the ground that on the selfsame property there was an earlier probate of a Will executed by the husband of the testatrix. However, it has not been disputed insofar as the second Will is concerned. Such Will was also probated. In any event, the observation made in the said paragraph is with regard to the right to be exercised by the executor once a probate is granted. The property vests in the executor by operation of law. Moreover, it is a general observation and not with regard to the merits of the probate proceeding.

The application being IA No.GA/2/2024 is not maintainable and, hence, is dismissed.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)