

26-03-2025

AKG

Ct. 236

CO 239 of 2023
Sm. Mrinmoyee Saha
Vs.
Manika Saha & Ors.

Mr. Sandip Das

...for the Petitioner

Mr. Amar Nath Sen,

Mr. Malay Dhar

...for the Opposite parties.

Learned advocate for the petitioner and learned advocate for the opposite parties are present.

This application is directed against the order dated December 2, 2022, passed by the learned Civil Judge (Jr. Division), Diamond Harbour in Title Suit No. 102 of 2020. The title suit was instituted for eviction of the defendant nos. 1 to 4, who are opposite party nos. 2 to 5 in this application.

The learned Judge by order dated December 2, 2022, was pleased to add the opposite party no. 1 as a party in the instant suit. The ground for adding the petitioner as a party is on the allegation that the probate of suit property was obtained by fraud and pursuant to the grant application was made for revocation of the

probate, which is pending. There was a stay of further proceedings with regard to the administration of the estate of the deceased.

Subsequently, learned Additional District Judge, Diamond Harbour, South 24 Parganas was pleased to consider the application for revocation of probate and by invoking the provision of Order 7 Rule 10 of the Code of Civil Procedure issued a direction to return the plaint, the petitioner was directed to present the suit before proper forum. The interim order of stay passed by the said Court with regard to the administration of estate of deceased on earlier occasion was vacated.

Learned advocate for the petitioner submits that the order of injunction passed by the learned District Delegate is vacated and the application is returned to be filed before the competent Court, thus the order passed by the learned 3rd Civil Judge (Jr. Division) at Diamond Harbour in T.S. No. 102 of 2020, should be recalled or set aside.

Learned advocate for the opposite parties submits that pursuant to the order dated March 27, 2024, the opposite parties have filed a case for revocation of the probate before the District

Judge, South 24 Parganas, which is pending and the matter is assigned to the Learned 1st Additional District Judge, Diamond Harbour and the next date fixed on October 21, 2025,

It is an admitted position that there is no stay restraining the administration of the estate of the deceased. In the facts and circumstances of the case, this Court is of the view that at this stage the petitioner should be granted liberty to pray for recall the order dated December 2, 2022, passed in T.S. 102 of 2020. In the event, such application for recalling the order is made on the ground of earlier interim order being vacated, the said application for recalling shall be decided by the learned Court in accordance with law, after hearing the parties.

Accordingly, this revisional application is disposed of with the above mentioned observations.

It is made clear that this Court has not gone into the merits of the case and all points are left open to be decided by the learned Court.

Urgent certified *website* copies of this order, if applied for, be made available to the parties

upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)