

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FA No. 144 of 2025
+
CAN 1 of 2025

Sk. Asif Ali
-vs-
Sk. Tousif Ali and others

For the appellant : Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay,
Ms. Shreya Banerjee

For the respondents : Mr. Ashim Kr. Ganguly,
Mr. Pratim Chakraborty,
Ms. Raima Ganguly.

Heard on : April 28, 2025.
Judgment on : April 28, 2025.

Sabyasachi Bhattacharyya, J.:

1. In view of the short conspectus of the appeal, on consent of the parties, the appeal is taken up for hearing, on the basis of the papers before us, along with the connected application.
2. The limited question involved in the appeal is whether the learned District Judge, who dismissed the application of the appellant for revocation of the probate granted *ex parte*, had the jurisdiction to take up the said revocation case.
3. By the impugned judgment and deemed decree, the learned District Judge dismissed the revocation application on the ground that he did not have jurisdiction to take up the matter and the appellant ought to have moved the matter before the learned District Delegate, who had granted the probate.
4. We find from the records that the probate was granted by the learned District Delegate *ex parte*, in view of there being no objection to the grant of probate at that stage, since none appeared for the persons on whom citations had been made, including the present appellant.
5. Learned counsel for the appellant submits that Section 264 of the Indian Succession Act, 1925 (in short, “the said Act”), confers jurisdiction on the learned District Judge to grant and

revoke probates and letters of administration in all cases within his District.

6. The respondents argue that since the probate was granted in the first place by the District Delegate, it is the District Delegate, and not the District Judge, in whose court the revocation application ought to have been filed.
7. Upon hearing learned counsel for the appellants, we find that Section 264 comes under part IX of the said Act. Although under Part X, dealing with succession certificates, Section 388 of the Act speaks about investiture of inferior courts with jurisdiction of the District Court for the purposes of this Act and grants power for such purpose on the District Delegate as well to pass appropriate orders for grant of revocation of succession certificates, no such similar provision is found under Part IX of the Act, which deals with grant of probate and revocation of Wills, whereby the District Delegate or any court hierarchically inferior to the court of the District Judge has the power to entertain revocation cases in respect of grant of probate of Wills.
8. As such, upon hearing learned counsel for the parties, we conclude that the learned District Judge erred in law in observing that it did not have jurisdiction to take up the

application for revocation of probate under Section 263 of the said Act and dismissing the revocation case on the erroneous premise that the revocation case was merely an application in the nature of a recall/modification application.

9. Hence, FA No. 144 of 2025 is allowed on contest, thereby setting aside the impugned judgment and deemed decree dated January 17, 2025, whereby the appellant's revocation case was dismissed, and remanding the matter to the learned District Judge, Bankura for rehearing the appellant's revocation case on merits in accordance with law.
10. It is made clear that this Court has not entered into the merits of the respective contentions of the parties in respect of the case made out in the revocation application and it will be open to the learned District Judge to decide all issues in accordance with law.
11. Leave is granted to the parties to seek appropriate interim orders before the learned District Judge upon remand.
12. It is further clarified that the issue as to whether the revocation application is barred by the law of limitation is also kept open to be decided by the learned District Judge afresh.
13. Consequentially, CAN 1 of 2025 stands disposed of as well.
14. There will be no order as to costs.

15. Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)