

Item No. 63

Ct 22

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07.01. 2025

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 656 of 2022

**Mohana Ryan nee Maity
Vs
Sri Tarun Kumar Rudra & Ors.**

Mr. Sounak Bhattacharya,
Mr. Satyam Mukherjee,
Ms. Sayani Ahmed,
Mr. Purnendu Shekhar Ghosh.

... for the petitioner.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,
Mr. Soumava Santra,
Mr. Tapas Chatterjee.

... for the opposite party No.1 & 2.

1. This revisional application has been filed assailing the order dated 2nd March, 2022 passed in connection with Title Suit No.447 of 2020, wherein Learned Civil Judge (Senior Division) 2nd Court, Barasat, North 24 Parganas allowed one application under Order I Rule 10(2) of the Code of Civil Procedure which was filed on 18.11.2021 by one Sudipta Kumar Maity was not a party to the suit.
2. Both the learned counsel appearing on behalf of the parties to this revisional application are ad idem of the fact that the suit was filed in respect of

B Schedule property to the plaintiff which was already bequeathed by executing a Will by the original owner in favour of the opposite party No.1 and 2 (original defendant).

3. From the application under Order I Rule 10(2) of the Code of Civil Procedure, it is found that one Sudipta Kumar Maity is also admitted to be an executor and beneficiary of the Will in respect of rest of the A Schedule property.
4. Learned counsel appearing on behalf of the petitioner has submitted that the suit has been filed against the opposite party Nos.1 and 2 in respect of B Schedule property comprising 2nd floor and rear portion of the ground floor.
5. In opposition to that, learned counsel appearing on behalf of the opposite party Nos. 1 and 2 has contended that two Wills were executed by the owner of the building and the petitioner/ Sudipta Kumar Maity got a portion of the property i.e. first floor and front portion of the ground floor by way of a Will thereby appointing him as executor and beneficiary.
6. Learned counsel appearing on behalf of the opposite party Nos. 1 and 2 anticipated one situation that if probate is granted in both the Wills then the petitioner/plaintiff would have no locus standi to file any suit even in respect of the

property.

7. Learned counsel appearing on behalf of the opposite party Nos. 1 and 2 has tried to make this Court understand the situation after granting of probate in respect of the two Wills executed in favour of the opposite party No.1 and 2 and the petitioner/Sudipta Kumar Maity.
8. Admittedly, one Will was executed in favour of the opposite party Nos. 1 and 2 in respect of B Schedule property and the petitioner/plaintiff filed the suit claiming herself as legal heir of the original owner. It is further admitted that the third party Sudipta Kumar Maity already filed a suit against the petitioner/plaintiff in respect of rest portion of A Schedule property.
9. On perusal of the impugned order, I do not find any specific reason for allowing the application under Order I Rule 10(2) of the Code of Civil Procedure.
10. Considering all facts and circumstances, I find that Sudipta Kumar Maity being the executor and beneficiary of the rest portion of the A Schedule property cannot be a party to the suit in respect of B Schedule property, who has admittedly filed a separate suit against the petitioner/plaintiff of this Suit.
11. As a sequel the order impugned passed in connection with Title Suit No. 447 of 2020 stands

set aside.

12. Learned Trial Judge is requested to dispose of the Title Suit as expeditiously as possible in accordance with law.
13. With this observation, the revisional application stands disposed of.
14. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)