

26.11.2025
SL No.3
Court No.6
(gc)

CO 1922 of 2025

**Shyamali Mondal
Vs.
Sri Ajoy Chakraborty**

Mr. Rajdeep Bhattacharya,
Mr. Sauradeep Dutta,
Mr. Himadree Ghosh,
...for the Petitioner.
Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. Samrat Chakraborty
...for the Opposite Party.

1. The revisional application has been filed challenging an order dated February 18, 2025 passed by the learned District Judge, Hooghly in Act 39 Case No.44 of 2022. By the order impugned, the learned Court rejected the application for supply of a copy of the Will in respect of which probate was sought for. The opposite party filed a petition dated October 4, 2024, wherein he urged that the petitioner had no locus standi to be added as a litigant as she had no caveatable interest. She was neither a legal heir, nor a relative of the makers of the Will. The petitioner filed an objection to the said application dated October 4, 2024 filed by the opposite party, inter alia, stating that by the deed of settlement Birendra Nath Chakraborty and

Manju Chakraborty had settled a property in her favour and she wanted to inspect the Will to understand whether the same property was included in the estate of the deceased.

2. The Court held that, admittedly, Shyamali Mondal was neither an heir nor a successor nor was she claiming through the successors. It appeared from the deed of settlement, which is a registered document, that a property had been settled in favour of the petitioner and she was enjoying the same. According to the Court, in a probate proceeding the genuineness of the Will is decided. Thus, the right, title and interest of Shyamali would not be germane for a decision in the said proceeding and Shyamali should not be permitted to inspect the Will. However, the learned Court observed that, Shyamali had the right to approach to any other appropriate forum in the event her title was clouded. Thus, the prayer of the petitioner for supply of the Will was not found to be justified.
3. Mr. Rajdeep Bhattacharya, learned Advocate appearing for the petitioner relies upon the following judgments in support of his contention that Shyamali has an interest in the estate of the deceased and should have been allowed to inspect the Will:-

- i) G. Gopal Vs. C. Baskar & Ors.*
reported at *(2008) 10 SCC 489*;
 - ii) Shanti Devi Agarwalla Vs. Kusum Kumari Sarkar & Anr.* reported at *AIR 1972 Orissa 178*;
 - iii) Nabin Chandra Guha Vs. Nibaran Chandra Biswas* reported at *AIR 1932 Cal 734*.
4. **G. Gopal** (supra) has been relied upon on the proposition that, even if a person had a slight interest in the estate of the deceased, such person should be allowed to contest the probate proceeding.
 5. **Shanti Devi Agarwalla** (supra) has been relied upon on similar a proposition of law that, if there was a bare possibility of any interest in the estate of the deceased, a party could oppose the testamentary proceeding.
 6. Reliance was placed on **Nabin Chandra Guha** (supra) on the proposition that a purchaser from the heir of the testator, after the death of the testator, had a locus to contest the proceeding.
 7. Mr. Bhattacharya submits that when a purchaser, being a third party and not a direct heir, had a caveatable interest, there was no reason why the petitioner, who has an interest in one of the properties of the testators, should not be allowed to inspect the Will and then decide whether she wants to contest the proceeding or not.

8. Mr. Partha Pratim Roy, learned Advocate appearing for the opposite party submits that the learned Court did not commit any error. According to Mr. Roy, the petitioner claims to have acquired the right, title and interest of the property which was settled in her favour by the Chakrabortys prior to their death. She claims to be enjoying the property as full owner thereof. The proceeding for grant of probate is restricted to the estate of the deceased i.e., what the testators' left behind. Shyamali claims to have acquired right, title and interest of the property on the basis of the deed of settlement during the lifetime of the testators. The testators lost all right, title and interest in respect of the property. Moreover, a probate proceeding is restricted to adjudication of the genuineness of the Will and nothing beyond. Grant of probate would not create any title nor divest the petitioner of her title. If there is a threat to the petitioner's title or if any one disputes the petitioner's title, the dispute will be settled by a civil court, in a different proceeding.
9. In this regard, Mr. Roy has referred to a decision of the Hon'ble Supreme Court in **Saroj Agarwalla (Dead) through Legal representative Abhishek Agarwalla Vs.**

Yasheel Jain reported at **(2017) 14 SCC 285**.

The relevant paragraph is quoted below:-

“10. A query arises as to why the Division Bench has recorded its views as “prima facie”. The Answer has been provided by the learned Counsel for the respondents by placing reliance upon para 2 of the judgment of this Court in Ishwardeo Narain Singh Vs. Kamta Devi; AIR 1954 SC 280. This Court pointed out that: (AIR P.281, para 2)

“2. ... The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court.”

10. In this case, the petitioner is inclined to oppose the grant of probate upon verification whether the Will includes the property which was settled in her favour. Thus, the approach of the petitioner is speculative and futuristic.
11. Under such circumstances, I do not find any irregularity in the order impugned. I accept the contention of Mr. Roy to the extent that the petitioner is not claiming through any heir and the decisions of the Hon'ble Apex Court do not

apply. The petitioner is also not an heir. The estate of the deceased in respect of which the Will is sought to be probated is restricted to what the Chakrabortys left behind, but the petitioner claims to have acquired right, title and interest prior to the death of the testators. Thus, the testators had already transferred their right, title and interest in favour of the petitioner in respect of the property mentioned in the Deed of Settlement, which is a registered document. Under such circumstances, the decisions relied upon by Mr. Bhattacharya do not apply. The petitioner claims to be in possession. The petitioner submits that till now, her title or possession has not been disturbed.

12. Under such circumstances, if in future, the petitioner is disturbed in any way or the petitioner's title is clouded in any way, the petitioner has the remedy before the appropriate forum. A title dispute has to be decided by a separate forum. The grant of probate will not create any title.
13. Accordingly, the revisional application is disposed of without any interference.
14. All observations are tentative and restricted to the adjudication of this revisional application.
15. There shall be no order as to costs.

16. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)