

Court No. 6
(265719)

09.07.2025
(AD 3)
BP/(S. Banerjee)

CO 2382 of 2025

Raj Kumari Debi Sharma @
Rajshree Sharma
Vs.
Bajrang Lal Sharma

Mr. Aniruddha Chatterjee, Sr. Advocate
Mr. Ishwar Chandra Sharma
..for the petitioner

Mr. Sukanta Chakraborty
Mr. Anindya Halder
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being no. 32 dated March 27, 2025 passed by the learned Additional District Judge, 1st Court at Asansol in O.S. Will Case No. 01 of 2021.

By the order impugned, the application under Section 10 of the Code of Civil Procedure stood rejected.

Mr. Chatterjee, learned senior advocate appearing for the petitioner submits that though the petitioner filed an application for stay of all further proceedings of the probate suit but, on instructions, he submits that the probate suit and the partition suit are to be clubbed together and heard analogously. He further submits that the opposite party herein filed a suit for declaration that he is the adopted son of Sabitri Debi Sharma that is the testatrix. He submits

that the Hon'ble Division Bench in FMA 4349 of 2015 directed the partition suit and the suit for declaration that the opposite party is the adopted son of Sabitri Debi Sharma should be heard analogously by a common court. He submits that the probate suit should also be heard analogously with the suit for partition.

Mr. Chakraborty, learned advocate appearing for the opposite party submits that the issues involved in the probate suit and the suit for partition are completely different and complications will arise if the partition suit and the probate suit are directed to be heard analogously. In support of such contention Mr. Chakraborty places reliance upon the decisions of Co-ordinate Benches in the case of Jayanta Kumar Mondal & Ors. Vs. Brojo Gopal Dalal & Anr. reported at (2007) 4 CHN 101 and Asoke Kumar Himmatsinghka Vs. Rajendra Kumar Himmatsinghka reported at LAWS (CAL)-2005-6-25 in C.O. 753 of 2005, order passed on 07.06.2005 in support of his contention that the probate suit cannot be stayed on the ground of pendency of the suit for partition.

In reply Mr. Chatterjee, learned senior advocate places reliance upon a decision of the Hon'ble Supreme Court in the case of Nirmala Devi Vs. Arun Kumar Gupta & Ors. reported at (2005) 12 SCC 505 and Balbir Singh Wasu Vs. Lakhbir Singh & Ors.

reported at (2005) 12 SCC 503 in support of his contention that the probate suit and the suit for partition should be heard analogously.

Heard the learned advocates for the parties and perused the materials placed.

The opposite party herein namely, Bajrang Lal Sharma filed a suit being Title Suit No. 190 of 2000 praying for declaration that he is the adopted son of Sabitri Devi Sharma. The said suit is presently pending before the learned Additional District Judge, 1st Court at Asansol, Paschim Bardhaman.

The petitioner herein filed a suit for partition being Title Suit No. 10 of 2001 impleading Sabitri Debi Sharma as the defendant therein. The said suit is pending before the learned Civil Judge (Senior Division), 1st Court at Asansol.

The suit for partition is at the evidence stage. In the probate suit a date has been fixed for framing of issues. Therefore, both the suit are more or less at the same stage.

Three Hon'ble Judges of the Hon'ble Supreme Court in the case of **Nirmala Devi (supra)** held that the decision in the probate proceedings on the question of proof of the Will will have a direct impact on the civil suit and for such reason the Hon'ble Supreme Court directed the title suit pending before a different court to be

transferred to the court of the District Judge and be clubbed with the probate case for being tried together.

In **Balbir Singh Wasu (supra)**, the Hon'ble Supreme Court after noting that a large number of issues would overlap expressed the view that both the probate proceedings and the civil suit should be clubbed and heard together by the District Judge who would be competent to hear and dispose of both the civil suit as well as the probate proceedings.

The Title Suit No.10 of 2001 is a suit for partition wherein the testatrix namely, Sabitri Debi Sharma was initially impleaded as the defendant. The properties involved in the will of Sabitri Debi Sharma which is the subject matter of the probate suit being OS Will Case No. 01 of 2021 is also the suit property that is involved in the suit for partition being Title Suit No. 10 of 2001. The OS Will Case No.01 of 2021 was filed for grant of probate to the will of Sabitri Debi Sharma who was the original defendant in the partition suit.

The suit properties and the parties involved in the probate suit and the partition suit are same. Considering the nature of the probate and partition suit, this Court is of the considered view that a large number of issues would overlap in the two proceedings.

For such reason, this Court is inclined to pass an order for analogous hearing of the probate suit and the partition suit.

The Hon'ble Division Bench in the order dated April 28, 2006 passed in FMA 4349 of 2015 in order to avoid conflict of decisions between the partition suit and the declaratory suit, requested the learned District Judge, Burdwan to transfer the declaratory suit being Title Suit No. 190 of 2000 from the court of the learned Civil Judge (Jr. Division) 1st Court at Asansol to the court of the learned Civil Judge (Sr. Division) at Asansol where the partition suit is pending so that both the suits can be tried by a common court simultaneously one after another. Thus, this court finds that the suit for declaration was not directed to be heard analogously with the suit for partition as submitted by Mr. Chatterjee, learned Senior Advocate for the petitioner.

However, in order to avoid any conflict of judicial decisions, this court is of the considered view that all the three suits being TS No. 10 of 2001, TS No. 190 of 2000 and OSW Case No. 1 of 2021, should be tried by the same court.

In Jayanta Kumar Mondal (supra), the Co-ordinate Bench held that since the jurisdiction of the court in the probate proceeding is different and also that since the matter in issue in the suit in question was not directly and substantially the same with the earlier proceeding i.e. the probate suit, provision of Section 10 is not

attracted. The said decision is distinguishable on facts and cannot come to the aid of the opposite party.

In Asoke Kumar Himmatsinghka, the Co-ordinate Bench was not apprised of the fact whether the probate proceeding was a contentious cause. The co-ordinate bench observed that the natural heirs and legal representatives of the testatrix and the legatees named in the Will are prolonging the probate proceedings in collusion with each other held that there is no justification to stay the partition suit. The said decision being distinguishable on facts cannot be applied to the case on hand.

In view of the reasons stated hereinabove, CO 2382 of 2025 stands disposed of by requesting the learned District Judge, Paschim Burdwan to transfer the declaratory suit being TS No. 190 of 2000 which is now pending before the learned Civil Judge (Sr. Division), Asansol and the suit for partition, being TS No. 10 of 2001, which is also pending before the learned Civil Judge (Sr. Division), Asansol, to the court of the learned Additional District Judge, 1st Court at Asansol where the OS Will Case no. 1 of 2021 is pending, The suit for partition and the probate suit should be tried analogously by the transferee court and the suit for declaration shall be tried by the transferee court in the

light of the direction passed the Hon'ble Division Bench in FMA 4349 of 2015.

The impugned order stands modified with the above observation and direction.

At this stage Mr. Chakrabarti, learned advocate appearing for the opposite party submits that the partition suit has been fixed for hearing on July 23, 2025 and the probate suit is fixed for framing of issues on August 7, 2025.

In the light of the aforesaid submission made by Mr. Chakrabarti, the learned District Judge, Paschim Bardhaman is requested to transfer the partition suit and the declaratory suit as expeditiously as possible.

This court expresses its hope and trust that the transferee court shall make all endeavours to dispose of the suits as expeditiously as possible.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)