

Sl.30
08.08.2025
Court No.6
BP

C.O. 2868 of 2025

Amar Nath Sadhukhan
-versus-
Gora Chand Sadhukhan & Ors.

Mr. Kushal Chatterjee
Mr. Oishik Chatterjee
Mr. Debrup Choudhury
for the petitioner

Mr. Rahul Karmakar
Ms. Ishita Kundu
..for the opposite party no.1

This application under Article 227 of the Constitution of India is at the instance of an objector to a proceeding for grant of probate and is directed against an order being no. 42 dated July 4, 2025 passed by the learned Additional District Judge, Fast Track Court, 3rd Court, Barrackpore, North 24 Parganas in other Suit No. 11 of 2019.

By the order impugned the application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the written statement stood rejected.

Mr. Chatterjee, learned advocate appearing for the petitioner submits that the testator during his life time entered into agreements with third parties in relation to the properties involved in the will and pursuant to such agreement substantial sum of money was credited to the account of the testator which the opposite parties herein being the propounder had misappropriated. Mr.

Chatterjee places reliance upon the provisions laid down under Sections 276, 304 and 317 in support of his contention that the facts sought to be incorporated are necessary for the purpose of effective adjudication of the proceedings for grant of probate.

Heard Mr. Karmakar, learned advocate appearing for the opposite party on such submission.

The opposite party no.1 is one of the executors to the last will and testament of one Paresh Nath Sadhukhan dated 11th April, 1919. The application for grant of probate became a contentious cause and the same was registered as O.S. 11 of 2019 and is presently pending before the learned Additional District Judge, Fast Track Court, 3rd Court, Barrackpore.

After going through the schedule of amendment this Court finds that the petitioner sought to incorporate the fact that the testator during his life time entered into agreements with certain third parties pursuant to which the third parties paid a substantial sum of money to the account of the testator and the propounder had misappropriated substantial sum of money from the account of the testator. It is well settled that the probate court cannot decide the title of the properties involved in the will. The probate court is only required to decide as to whether the will was validly executed by the testator with free mind and whether there are any suspicious circumstances surrounding the execution of the will.

After going through the schedule of amendment this Court finds that the petitioner herein did not raise any additional issue challenging the execution of the will but only sought to incorporate certain facts which are not germane for the purpose of deciding a suit for grant of a probate to the will of the testator.

Clause (a) to (e) of Section 276(1) of the Indian Succession Act states the facts which are required to be stated in a petition for probate. Clause (d) thereof states that the amount of assets which are likely to come to the petitioners and are also to be stated. By way of proposed amendment the petitioner sought to make out a case that the propounder misappropriated certain amounts which already was credited to the account of the testator. Such facts cannot come within the expression “amount of assets which are likely to come to the petitioner’s hand.” Section 304 of the Indian Succession Act states that where a person who has so acted so as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in course of administration. Section 304 of the Indian Succession Act comes into play in the course of administration and not at the stage of deciding an application for grant of probate. Section 317 of the

Indian Succession Act deals with inventory and accounts. Section 317 falls under Chapter VII of the Indian Succession Act which deals with the duties of an executor or administrator. Thus the provisions of Section 317 of the Indian Succession Act cannot come to aid of the petitioner for the purpose of allowing an application for amendment of the written statement.

The learned trial judge was right in holding that the proposed amendment has no connection as to the genuineness of the impugned will dated 11th April, 1919 and as to any foul play in the matter of execution of the impugned will. The learned trial judge applied the correct legal tests for deciding an application for amendment of a written statement in a probate suit.

For all the reasons as aforesaid, this court is not inclined to interfere with the order impugned.

Accordingly, C.O. 2868 of 2025 stands dismissed.

There shall be, however, 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.)