

18.08.2025
Item no. 07.
Court No.6.
AB

C. O. 2891 of 2025

**Smt. Asha Rao
Vs
Smt. Sarita Bagaria & Ors.**

Mr. Sakya Sen, Sr. Adv,
Mr. Nirmalya Dasgupta,
Ms. Sormi Duttafor the Petitioner.

Mr. Aniruddha Mitra,
Mr. D. Sengupta,
Mr. Promod Kr. Bagaria,
Ms. M. Saraffor the O. P. No.1.

This application under Article 227 of the Constitution of India is at the instance of an objector to a probate proceeding, which has been subsequently registered as a contentious cause being Original Suit No.2 of 2015 and is directed against an order dated November 25, 2024, passed by the learned Additional District Judge, 11th Court, Alipore.

By the order impugned, the application filed by the petitioner herein praying for dismissal of O.S. No.2 of 2015 stood rejected.

Mr. Sen, learned Senior Advocate appearing for the petitioner, submits that the opposite party no.1 herein filed an application being Act 39 Case No.18 of 2013 (probate) for grant of probate to the last Will and Testament of one Savitri Devi Bhotika, since deceased.

He submits that the petitioner filed a caveat and thereafter the Act 39 case was treated to be a contentious cause and the said application was returned to the opposite party no.1 herein for filing before the appropriate forum.

Mr. Sen further submits that thereafter the opposite party no.1 herein filed a fresh plaint impleading several other persons as defendants though the petitioner was the only objector to the probate proceedings.

He further submits that the new plaint contained several other allegations which did not form part of the Act 39 case. Mr. Sen further submits that on an earlier occasion, the learned Trial Judge passed an order dated 19.01.2023 allowing the prayer of the petitioner that the fresh plaint shall not be taken into consideration. According to Mr. Sen, the probate suit is proceeding on the basis of the fresh plaint, which compelled the petitioner to file the application praying for dismissal of the probate suit.

The learned advocate for the opposite party no.1 submits that after the application in the Act 39 case was returned to the opposite party no.1, the said application was re-filed before the learned District Judge, 24 Parganas (South) at Alipore. He further submits that the lower court records in the Act 39 case have been tagged along with the records of the

instant O. S. No.2 of 2015. He submits that the learned Trial Judge was right in rejecting the application filed by the petitioner as the suit cannot be dismissed as the original application, which was returned to the petitioner, is available in the records.

Heard the learned Senior Advocates for the respective parties and perused the materials placed.

On a query of the Court, learned advocate appearing for the opposite party no.1, submits that the application, which was registered being Act 39 Case No.18 of 2013 (probate), which has been annexed at page 59 of the civil revision application, is available in the lower court records, which has been tagged along with the records of original suit being O. S. No.2 of 2015.

The learned advocate appearing for the opposite party no.1, on instructions, submits that through inadvertence the plaint at page 50 of the civil revision application was filed. He submits that the opposite party no.1 herein shall put an endorsement “not pressed” on the copy of the plaint, which is available in the lower court records (a copy of which has been annexed at page 50 of the civil revision application) within a week from the date of receipt of a server copy of this order. Such submission of the learned Advocate appearing for the opposite party no.1 is placed on record.

He further prays that liberty be given to the opposite party no.1 to file an amended cause title of the Original Suit no.2 of 2015.

It appears from the records that the learned Trial Judge by an order dated 19.01.2023 has already held that the fresh plaint shall not be taken into account and the opposite party no.1 shall continue with the application for grant of probate under Section 276 of the Indian Succession Act, which was filed earlier.

It further appears from the application filed by the petitioner herein that the petitioner prayed for dismissal of O.S. No.2 of 2015, which arises out of Act 39 case. The suit cannot be dismissed only on the ground that a fresh plaint, which is inconsistent with the original application, was filed as the original application is tagged with the records of the case.

Thus, the order impugned does not suffer from any infirmity in view of the stand taken by the opposite party no.1 before this Court.

C. O. No.2891 of 2025 stands disposed of without interfering with the order impugned but by giving liberty to the opposite party no.1 to put an endorsement (not pressed) on the fresh plaint filed by the opposite party no.1 and with further liberty to the opposite party no.1 to file an amended cause title of the existing plaint. The opposite party no.1 herein

shall be allowed to proceed with the application under Act 39 case which was registered as contentious cause and subsequently registered as O.S. 2 of 2015, a copy of which has been annexed at page 59 of the civil revision application in the light of the order dated 19.01.2023.

At this stage, Mr. Sen, learned senior advocate appearing for the petitioner, submits that a direction be passed upon the learned Trial Judge to dispose of the O.S. 2 of 2015 expeditiously.

Considering the fact that the original suit is pending from the year 2015 and a partition suit between the parties is also pending, which has been stayed on the ground of pendency of this probate suit, the learned Additional District Judge, 11th Court, Alipore is requested to dispose of the Original Suit no.2 of 2015 as expeditiously as possible but preferably by the end of January, 2026, without granting any unnecessary adjournment to either of the parties.

(Hiranmay Bhattacharyya, J.)