

19.09.2025
Item No.16
Ct. No.01
Saikat

FAT/241/2024
with
CA/1/2025
with
CAN/2/2025

SUNIL MONDAL AND ORS.
VS.
SABARI DAS AND ORS.

Mr. Sabyasachi Chatterjee, Adv.
Mr. Kiran Sk., Adv.
Mr. Akashdeep Mukherjee, Adv.
Mr. Sayan Banerjee, Adv.
Mr. Badrul Karim, Adv.

...For the Appellants

Mr. Lldaynarayan Betal, Adv.
Mr. Mriganka Patra, Adv.

...For the Respondent Nos.1 to 9 & 11

In Re: CAN 1 of 2025

1. There is a delay of 82 days in filing the appeal.
2. As sufficient cause has been shown for not preferring the appeal within the period of limitation, the delay in filing the appeal is condoned.
3. Accordingly, the application being Can 1 of 2025 is allowed and disposed of.

In Re: FAT 241 of 2024 with CAN 2 of 2025

4. The order rejecting the application for revocation of grant of will of one Adwaitya Saha is the subject-matter of challenge in this appeal.
5. Adwaitya Saha admittedly died issueless. He was at the relevant point of time surviving by his wife. The will named an executor. The executor filed an application for grant of probate in 1971 being Probate Case

No.93/71. Since by the time the application for revocation was filed the original record was destroyed. In terms of an order dated 19th November, 2011, passed in CO No.4067 of 2009 the case record was reconstituted and the miscellaneous application for revocation of grant of probate filed by the legal heirs of Banomali Saha in 1994 being Misc. Case No.56/1994 was heard and disposed of by the learned trial court on the basis of such reconstructed record. Although extensive argument has been made whether a forged vakalatnama of Banomali was filed in the said probate proceeding after the death of Banomali on 1st March, 1976, the fact remains on the date of death of the testator the only person required to be cited was his wife as the testator died issueless. The other legal heirs who have no right of succeeding to the estate of the testator on his death as the wife was surviving.

6. Under the Hindu Succession Act the wife falls under Class-I of heirs in section 8 and accordingly, no citation was required to be issued in the first place to Banomali. A mistake committed by the executor cannot give right to the legal heirs of Banomali to challenge the said will.
7. Moreover, the trial court after extensive recording of the facts and on consideration of materials on record has arrived at a finding that there was no challenge that the will was forged or obtained by fraud or misrepresentation.

8. It was alleged on behalf of the present appellants that a forged vakalatnama on the probate proceeding on behalf of their father on 21st September, 1978, filed but the appellants have failed to prove, produce or substantiate the said allegation. In any event, the appellants have also failed to justify their application for revocation of grant of probate in 1994 as by that time on the basis of the probate various steps have been taken by the executor. By reason of the death of Banomali in 1976 the sister of the testator would have a caveatable interest but the sister has not challenged the grant of probate.
9. In view of the fact that Banomali did not have caveatable interest inasmuch as there was no real challenge to the will by Banomali, even if it assumes for the time being that Banomali had an interest and in view of the inextricable delay in filing the application for revocation of grant of probate in 1994, by the time when the entire record was destroyed in terms of the Civil Rules and Orders and was reconstituted thereafter in terms of the said order, we are not inclined to interfere with the order passed by the learned trial court.
10. Accordingly, the appeal and the application are dismissed.
11. There shall be no order as to costs.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[SOUMEN SEN, C.J.(ACTING)]

(BISWAROOP CHOWDHURY, J.)