

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FA 382 of 2025
IA No: CAN 1 of 2025

Smt. Pushparani Jana and others
Vs.
Sri Anil Kumar Paik alias Anil Paik and others

For the appellants : Mr. Haradhan Banerjee, Sr. Adv.,
Mr. Partha Pratim Mukhopadhyay,
Ms. Manideepa (Paul) Roy,
Mr. Suresh Kumar Sahoo

For the
respondent no.1 : Mr. Pradyumna Sinha, Sr. Adv.,
Mr. Sannidhya Dutta

For the
respondent no.2 : Mr. Indradip Das

Heard on : 01.12.2025

Judgment on : 01.12.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the plaintiffs in a suit for declaration and consequential reliefs against an order (deemed decree) whereby the plaint of the said suit was rejected.

2. The reliefs claimed in the plaint are quoted hereinbelow:

- “(a) For a decree of declaration that the plaintiffs have still the absolute leasehold right under the defendant no- 3 over the (Ka) scheduled property.*
- (b) For a further decree of declaration that the defendants no – 1 & 2 have no manner of right, title, interest & possession over any part of the (Ka) scheduled property,*
- (c) A further declaration that the name of the plaintiffs’ predecessor Priya Ranjan Jana whose father’s name was/is PRASANNA KUMAR JANA,*
- (d) A further decree of permanent & perpetual injunction may kindly be passed restraining the principal defendants no - 1 & 2 and their men and agents from disturbing the peaceful right including possession of the plaintiffs over the (Ka) scheduled property, and also encumbrance transferring the third-party interest by making any sorts of alienation in respect of the (Ka) Schedule property.*
- (e) A decree of costs of the suit be awarded,*
- (f) Injunction,*
- (g) Receiver,*
- (h) Any other relief or reliefs may kindly be passed.”*

3. In the said suit, the premise of the allegation was that one Priya Ranjan Jana, the father of the plaintiffs/appellants, who was the son of Prasanna Kumar Jana, was not a party to a Will executed by another synonymous person, whose father’s name was Prasanta Kumar Jana, as opposed to Prasanna Kumar Jana. The learned Trial Judge, while rejecting the plaint, came to the finding that the plaintiffs have already filed a revocation case challenging the grant of probate in respect of the said Will, where similar points were raised.

The said revocation case has since been dismissed and an appeal preferred against the same by the plaintiffs/appellants.

4. Even otherwise, it was held by the learned Trial Judge that the relief of declaration is barred by Article 58 of the Limitation Act, since the knowledge about the challenge to the title of the plaintiffs' father Priya Ranjan Jana came to the knowledge of the plaintiffs at least prior to 2019, when the first revocation case was filed, which was subsequently withdrawn on technical grounds and filed afresh.
5. Learned senior counsel appearing for the appellants argues that the reliefs claimed in the suit are entirely different from those claimed in the revocation case. Learned senior counsel takes the Court through the pleadings in the plaint and seeks to impress upon the Court that the plaint case is primarily that the testator in the disputed Will, although synonymous with the plaintiffs' father, was an altogether different person. Whereas the name of the father of the testator was Prasanta Kumar Jana, that of the plaintiffs' predecessor-in-interest was Prasanna Kumar Jana.
6. As an alternative case, it is argued, it is also alleged that the Will was forged.
7. Learned senior counsel appearing for the plaintiffs/appellants argues that the issue as to identity of the testator was incidentally in issue in the testamentary proceedings and, as such, the finding of the probate court or the revocation court cannot operate as *res judicata* in a civil suit. Moreover, although the revocation case has been dismissed by the testamentary court, an appeal is pending before the appropriate

forum and, as such, since an appeal is deemed to be a continuation of the suit, applying such principle, the concept of *res judicata* cannot be attracted.

8. Learned senior counsel takes the Court also through the reliefs claimed in the suit and argues that those reliefs could not be granted by the testamentary court, which is of limited jurisdiction, and, as such, there cannot be any rejection of the plaint at this stage.
9. Lastly, it is argued by the appellants that even if some of the issues in revocation case and the present suit overlap, it is well-settled that a plaint cannot be partially rejected and the civil court was duty-bound to adjudicate on the remaining issues and grant the reliefs, which were not the subject-matter in the revocation case.
10. Learned counsel appearing for the respondents categorically controverts such arguments and places reliance on the order passed by the learned Single Judge, whereby the revocation case of the plaintiffs was dismissed. The premise of the judgment of the learned Single Judge, while dismissing the revocation case, was similar to the points which were urged by the appellants in the suit regarding the identity of the testator, which were categorically turned down by the revocation court.
11. That apart, it is argued that the plinth of the stands taken by the plaintiffs/appellants in the revocation case as well as the plaint of the present civil suit are identical and, as such, the present suit was rightly not entertained, by rejecting its plaint.

12. Placing reliance on the language of Article 58 of the Schedule of the Limitation Act, it is argued by the respondents that the learned Trial Judge was also justified in rejecting the plaint on the ground that the same was palpably barred by limitation.
13. While adjudicating the present appeal, we are to look at the pleadings in the plaint primarily. However, in terms of the amended Order VII of the Code of Civil Procedure, it is mandatory for the plaintiffs to file all documents on which the plaint relies as well as the documents referred to in the plaint. Thus, in the present context, it is not barely the pleadings made in the plaint but also the documents relied on in the plaint and referred to which can be looked at for the broader purpose of adjudicating an application under Order VII Rule 11 of the Code of Civil Procedure. That apart, since substantial extracts from the revocation application of the plaintiffs have been quoted by the plaintiffs/appellants in the plaint before the civil court, it all the more relevant for the Court, while deciding an application under Order VII Rule 11 of the Code, to look at the revocation application and its pleadings as well.
14. We find from the pleadings in the present suit that the plaintiffs have sought to make out an alternative case as to the Will being forged and that the testator in the said Will being a different person than the predecessor-in-interest of the present plaintiffs, through whom the plaintiffs claimed leasehold rights in respect of the subject property.
15. However, the said stands are mutually destructive, since the premise of the allegation that the signature in the Will was forged is that the

predecessor-in-interest of the plaintiffs, Priya Ranjan (son of Prasanna) was sought to be impersonated in the Will. If that be the allegation, the obvious corollary thereof is that the predecessor-in-interest of the plaintiffs was sought to be portrayed as the testator in the Will.

16. However, the other argument, that Priya Ranjan, who executed the Will, is a completely different person from the Priya Ranjan who is the predecessor-in-interest of the plaintiffs, stands on a diametrically opposite pole than the first pleading. Thus, such mutual exclusivity between the alternate pleadings itself indicates that the present suit is a vexatious and *sham* one, thus, fit to be nipped in the bud.
17. That apart, the principle as incorporated in Explanation VIII of Section 11 of the Code of Civil Procedure is also squarely applicable. The findings of the testamentary court on caveatable interest (and consequentially, identity of the testator), even if it is of limited jurisdiction inasmuch it cannot decide title, are binding on the civil court since the testamentary court was competent to decide the issues before it. Since the question of identity of the testator was raised by the plaintiffs themselves in their revocation application, the said question necessarily involves the issue of the alleged premise of the present plaint as well. Moreover, caveatable interest is the very premise before a testamentary court for a person to file a revocation case or to be impleaded in the probate proceedings. On a bare perusal of the revocation application, it is seen, that the plaintiffs' case in the same was that the plaintiffs have a caveatable interest in

respect of the disputed Will. In fact, in paragraph no. 13 of the revocation case, it was pleaded that after going through the alleged Will, it appears that the petitioners, being the wife and son of the deceased, did not receive any citation and/or notice with regard to the probate proceedings which they were legally entitled to. Thus, the said grounds taken in the revocation case by the present plaintiffs/appellants themselves clearly denotes that they claimed through the Priya Ranjan, who was the testator of the disputed Will.

18. As such, since the probate court has already decided the issue of legality and valid execution of the Will by the testator Priya Ranjan, thereby in effect recognizing the identity of the said testator, and since thereafter the revocation case filed by the appellants has already been turned down on the self-same pleadings having been taken by the plaintiffs, the same question cannot be raised all over again in the present suit. Mere pendency of an appeal against the said decision does not automatically operate as stay or take away the binding effect of the testamentary court's decision.
19. As the probate court, as a testamentary court, is a court of limited jurisdiction, it had the jurisdiction and competence to decide the issue of caveatable interest, which inextricably incorporates the issue of identity of the testator and the lineage which the present plaintiffs claimed through the testator. Thus, it cannot be said that the said issue of the predecessor-in-interest of the present plaintiffs being a different person than the testator, now sought to be set up, was not directly and substantially in issue in the revocation case.

20. Even otherwise, having not raised the question of identity but claiming through the testator, the plaintiffs are also barred by the principle of constructive *res judicata* on the one hand and on the other, by the principle of issue estoppel.
21. The plaintiffs, having the option to elect between the two alternative reliefs, chose the revocation forum where the plaintiffs having lost, the question as to identity of the predecessor-in-interest of the plaintiffs has already been finally decided. The testamentary court's verdict, being in the nature of a judgment in *rem*, also has wider ramifications.
22. Seen in the above perspective, we are of the clear opinion that the present suit of the plaintiffs/appellants is barred on several counts, first, on application of the doctrine of issue estoppel and constructive *res judicata* and secondly, on the ground of Explanation VIII to Section 11 of the Code of Civil Procedure.
23. That apart, as held earlier, the present suit is vexatious and it seeks to re-open a Pandora's Box which has already been conclusively decided by the testamentary court, thereby vexing the defendants on the self-same issue twice.
24. Even on the other ground, the learned Trial Judge was justified in holding that on the basis of the pleadings made out in the plaint, since the revocation case has been referred to, which itself was filed for the first time in the year 2019, it can very well be said that the first knowledge of the challenge to the title of the predecessor-in-

interest of the plaintiffs by way of the disputed Will was taken out at least before the year 2019.

25. Therefore, the present suit, instituted five years thereafter in the year 2024, is squarely precluded by application of Article 58 of the Schedule to the Limitation Act, 1963 which stipulates the limitation period at three years. Hence, the suit being bad on all the above counts, the learned Trial Judge was justified in rejecting the plaint at the outset, thereby nipping the vexatious, time-barred suit, which was also otherwise barred by law, at the bud.
26. Accordingly, FA 382 of 2025 is dismissed on contest without any order as to costs. CAN 1 of 2025 is disposed of accordingly.
27. A formal decree be drawn up in the light of the above.
28. It is made clear that none of the above observations shall prejudice the rights and contentions of the parties in the pending appeal against the dismissal of the revocation case of the plaintiffs/appellants.
29. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)