

D/L.24.
May 6, 2025.
MNS.

FAT No. 57 of 2025
+
CAN 1 of 2025
+
CAN 2 of 2025

Sri Pradip Kumar Samanta
Vs.
Sampa Basu Bairi

Mr. Debasis Kar,
Mr. Soumen Ghosh,
Mr. Hissain Musafi

... for the appellant.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Anirban Saha Ray,
Mr. Abhirup Halder

...for the respondent.

1. The present appeal has been filed against the grant of probate in respect of a Will in favour of the respondent by one Pradip Kumar Samanta, the son of one Malati Samanta, the latter being one of the heirs of the deceased testator.
2. Learned counsel for the appellant submits that CAN 1 of 2025 has been filed by the son of said Malati Samanta, who had a caveatable interest in the estate, in view of the said Malati Samanta being mentally unsound and unable to represent himself.
3. Learned counsel for the petitioner submits that in the probate Court, already an application under Order XXXII of the Code of Civil Procedure was

filed by the petitioner praying for representing his mother as her next friend.

4. However, such application was rejected, against which a revisional application under Article 227 of the Constitution of India was pending before this Court, at which juncture the impugned probate decree was passed.
5. It is thus submitted that leave may be granted to the present petitioner to prefer the present appeal on behalf of his mother Malati Samanta.
6. Learned counsel appearing for the respondent contends that due to the negligence of the petitioner, the revisional application remained pending after its filing and as such since no stay order was passed in connection therewith, there was no impediment for the probate court to grant probate.
7. Secondly, it is contended that the mother of the present petitioner/appellant had contested and appeared on three dates in the probate suit and only on the fourth date, the petitioner filed the application under Order XXXII of the Code and as such, the probate court was justified in rejecting the said prayer.
8. Be that as it may, we find that the petitioner, during the lifetime of his mother Smt. Malati Samanta (the latter having caveatable interest in the property as an heir of the deceased testator), does not have

any right to the estate of the deceased testator. Consequentially, the present petitioner/appellant, namely, Pradip Kumar Samanta, during the lifetime of his mother, does not have a caveatable interest in the estate.

9. Thus, there is no scope of granting any leave to the present appellant/petitioner to prefer the appeal in his own name, purportedly on behalf of his mother.

10. The appropriate course of action might have been for the mother to prefer the appeal before this Court and for the present petitioner to take out an application for being permitted, as her next friend, to represent his mother.

11. Despite a similar application having been rejected by the probate court itself, fact remains that the revisional application preferred against such rejection order was still pending before this Court when the probate decree was passed.

12. As such, within the contemplation of Section 105 of the Code of Civil Procedure, this Court is not debarred from looking into the veracity of the rejection of the petitioner's application under Order XXXII of the Code of Civil Procedure.

13. Be that as it may, the present appeal is not maintainable at the behest of the petitioner/appellant.

14. Accordingly, CAN 1 of 2025 is dismissed on contest, thereby refusing leave to the appellant to prefer the appeal.

15. Consequentially, FAT No. 57 of 2025 is also dismissed along with CAN 2 of 2025.

16. However, it is made clear that nothing in the above order shall preclude Malati Samanta, the mother of the petitioner, to prefer an appeal against the probate decree in her own name, subject to the law of limitation.

17. If such an appeal is filed, it will be open for the petitioner to take out an appropriate application seeking to represent his mother as next friend.

18. However, we do not express any opinion at this juncture on the legality or the outcome of such appeal or application, if at all preferred.

19. We hereby grant leave to the learned Advocate-on-record for the appellant/petitioner to take back the certified copies of the impugned judgment and decree upon furnishing photocopies of the same for the records.

20. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)