

10.12.2025
Ct. No.13
Sl. No.3
akd

F. A. 152 of 2010
(C. A. N. 1 of 2025)
(C. A. N. 2 of 2025)
(C. A. N. 3 of 2025)

[Mrs. Trishna Das (sole) -Vs- Augustine Robert D' Cruz]

Mr. Nilanjan Bhattacharya .. Sr. Advocate
Mr. Sabyasachi Chatterjee
Mr. Badrul Karim
Mr. Zanzeer Khan
Mr. Rishab Khan
Mr. Aritra Ghosh
Ms. Monalisha Sinha
... .. for the appellant

Mr. Utpal Bose .. Sr. Advocate
Mr. Harsh Tiwari
Mr. Bhupendra Gupta
Mr. Anwar Hossain
... for respondent nos.1 to 4

Mr. Anujit Mookherji
Mr. Aniruddha Dutta
... .. for the applicant
[in CAN 1 of 2025]

Mr. Shaunak Ghosh
Mr. Rajib Mullick
Ms. Divya Agarwal
... .. for the applicant
[in CAN 2 of 2025]

1. This Court has heard the arguments advanced by Mr. Nilanjan Bhattacharyya, learned senior counsel and Mr. Sabyasachi Chatterjee, learned counsel for the appellant and Mr. Utpal Bose, learned senior counsel as well as Mr. Harsh Tiwari, learned counsel for the respondent nos. 1 to 4.
2. The brief facts relevant to the case are that an Administrator was appointed in respect of a will and testament of one Neville William Earle in O.S. 05 of 1981. The Administrator was appointed by order of the trial court dated 05.02.2002.

3. The appellant before this court claiming to be family member and heir of the said Neville William Earle had filed a suit for revocation of the order appointing Administrator being Revocation Case No. 106 of 2003. A prayer was made to revoke the order dated 05.02.2002 of appointment of the Administrator on the ground of fraud and suppression of material facts of an earlier probate granted in respect of the selfsame property. Such probate, according to the appellant, was granted to another side of the family of the original owner of the property namely, Mary Winifred Earle. It was also urged that the appellant was not cited in O.S. 05 of 1981.

4. Revocation Case No. 106 of 2003 was dismissed by the learned Additional District Judge, Fast Track Court, 7th Court at Alipore, Dist. South 24-Parganas on 03.02.2010. F.A. 152 of 2010 was filed against the said judgment and decree.

5. Before this court, the appellant filed an application for substitution of the Administrator who died on 24.10.2012.

6. Mr. Utpal Bose, learned senior counsel for the respondent nos.1 to 4 has placed reliance on two decisions :

- 1) *Haribusan Datta vs. Manmatha Nath Datta* reported in *Indian Law Report Vol. XLV page 862*;**
- 2) *Thrity Sam Shroff vs. Shiraz Byramji Anklesaria & Anr.* reported in *2007 (4) Mh.L.J. 56*.**

7. It is argued that an application for substitution of a deceased Administrator is itself misconceived. The only remedy that a party has is to seek appointment of a new Administrator by instituting a fresh proceeding.

8. This Court is in agreement with the views of the Bombay High Court in ***Thrity Sam Shroff*** case (**Supra**) and the views

of the Single Bench in *Haribusan Datta* case (**Supra**) to the extent that an application for substitution of a deceased Administrator is misconceived.

9. This Court is of the view that the original proceeding itself for appointment of an Administrator in respect of the will and testament of Neville William Earle may be revived from its very inception.

10. The appellant may be permitted to intervene in such proceeding and their locus may be decided in the said proceeding. While doing so, the findings of the court below in Revocation Case No. 106 of 2003 shall not be binding on the court hearing the application for appointment of Administrator.

11. Let the Registry of the District Court at Alipore renumber O.S. No. 05 of 1981, if necessary.

12. It is submitted by the respondent nos.1 to 4 as well as the Developer and other private respondents that after the Administrator was appointed, the estate was administered to an extent. Pursuant to such administration, construction has occurred on the property comprising of about 45 cottahs of land located at 27, Ekbalpore Lane, Kolkata – 700 023.

13. There shall be an injunction upon all the parties from creating any transfer and/or further encumbrance and/or construction and/or change in nature and character of the property in any manner whatsoever, as on date. Such injunction shall abide by the final result of the proceeding for appointment of Administrator being O.S. No. 05 of 1981 (*as may be renumbered*). In essence, status quo shall be maintained in respect of the property as on date.

14. The trial court is directed to expedite disposal of the said O.S. No. 05 of 1981 (*as may be renumbered*). The trial Judge shall proceed to decide O.S. No. 05 of 1981 (*as may be renumbered*) uninfluenced by any observations made hereinabove.

15. All questions are kept open for the trial Judge in deciding O.S. No. 05 of 1981 (*as may be renumbered*) independently including any application for intervention.

16. The impugned judgment and order dated 03.02.2010 shall stand set aside.

17. With the aforesaid observations and directions, FA 152 of 2010 is disposed of.

18. In view of the disposal of the appeal itself, all the pending connected applications are disposed of.

19. There will be no order as to costs.

20. All parties are to act on a server copy of this order duly downloaded from the official *website* of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)