

OD-2

ORDER SHEET

PLA/354/2024
IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY & INTESTATE JURISDICTION

IN THE GOODS OF :
SMT. DOLA BASU, DECEASED

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 16th April, 2025.

Ms. Megha Das, Advocate for the petitioner.

The Court : Perused the note filed by the Registrar, Original Side of this Court dated 29th March, 2025. On a perusal of the same it appears that the testatrix ordinarily resided at the time of her death within the Ordinary Original Civil Jurisdiction of this Court. The affidavit of assets discloses the only immovable property to be also situated within the Ordinary Original Civil Jurisdiction of this Court. The concurrent jurisdiction of this Court is sought to be invoked by pleading a loan said to have been given by the deceased to one Dip Narayan Mitra residing outside the jurisdiction of this Court. No loan document has been filed with the application or the affidavit of assets. Assuming without admitting that a loan had been given to a person outside the jurisdiction of this Court then also it was payable to the deceased within the ordinary original civil jurisdiction of this Court following the principle of debtor seeks the creditor.

In that view of the matter and in view of the amendment to the City Civil Courts Act, 1953 by way of the Amendment Act of 1980, this Court does not have the jurisdiction to receive, try and determine this probate application wherein the deceased ordinarily resided within jurisdiction and the properties are all within the jurisdiction. This Court in the case of a Hindu only exercises concerned jurisdiction under Section 300 of the Indian Succession Act, 1925 as the jurisdiction under Clause 34 of the Letters patent, 1865 has been taken away by the 1980 amendment to the City Civil Courts Act 1953. In this context, one may refer to the judgments reported in AIR 2012 CAL 7 **Pandraj Kunjilal Sadh (Deceased) and Rai Kumar Sadh Vs. Santosh Kumari Mahendra Sadh & Ors.** The probate application is directed to be returned to the propounder after completion of all necessary formalities for being presented before the appropriate Court. The particulars of the case should be deregistered from the data base of this Court on the same being returned to the propounder.

The parties to act on a server copy of this order without insisting upon production of a certified copy thereof.

(ARINDAM MUKHERJEE, J.)