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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM ORDER PASSED IN ITS
TESTAMENTARY AND INTESTATE JURISDICTION
ORIGINAL SIDE

APO/125/2023
With PLA/238/1995

IN THE GOODS OF :
SMT. GOURIPROVA SEN, DECEASED
-AND-
ANIRBAN SEN AND ORS.
-VS-
DHIRAJ DUTTA

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellants	:	Mr. Sudeep Sanyal, Sr. Adv. Mr. Sukanta Das, Adv. Mr. Chandrachur Lahiri, Adv.
For the Respondent	:	Mr. P. C. Paul Chowdhury, Adv. Mr. D. N. Mukherjee, Adv.

HEARD ON	:	06.11.2025
DELIVERED ON	:	06.11.2025

DEBANGSU BASAK, J.:-

1. The appeal is filed at the behest of the persons claiming to be the heirs and legal representatives of the deceased Gouriprova Sen. Gouriprova Sen expired on October 8, 1989.
2. The respondent herein applied for grant of probate of the Will of Gouriprova Sen, since deceased dated July 9, 1989.

3. Probate of the Will was granted on September 28, 1995. Application for revocation of the grant of probate of the Will was filed sometime in the month of July, 2022.
4. By the impugned judgment and order, learned single Judge dismissed the application for revocation of the grant of probate after returning primarily two findings. One finding is that, the appellants before us are not the heirs and legal representatives of deceased Gouriprova Sen and other finding is that, the application for revocation of grant of probate is barred by limitation.
5. Learned senior advocate appearing for the appellants draws the attention of the Court to the genealogical table. He submits that, Gouriprova Sen since deceased was married to Amulya Charan Sen since deceased. Gouriprova Sen and Amulya Charan Sen expired, without leaving behind any surviving children.
6. Learned senior advocate appearing for the appellants submits that Amulya Charan Sen, husband of Gouriprova Sen, was the son of Bidhu Bhusan Sen. Bidhu Bhusan Sen was the son of Ramkamal Sen. There were two sons of Ramkamal Sen, namely, Bidhu Bhusan Sen and Sashi Bhusan Sen. There were two sons of Sashi Bhusan Sen, namely, Jatindra Nath Sen and Sachindra Nath Sen. Jatindra Nath Sen expired unmarried. There were two sons of Sachindra Nath Sen, namely, Sanka Prasad Sen and Aswini Sen. There was a son and a daughter of Aswini Sen, namely, Nilanjana and Abirban.

- 7.** Learned senior advocate appearing for the appellants points out that, the appellants are the daughter and the son of Aswini Sen and Sanka Prasad Sen is the son of Sachindra Nath Sen. He contends that, since Amulya Charan Sen died without any issue on intestacy, the estate of Gouriprova Sen will devolve upon the heirs and legal representatives of Sashi Bhusan Sen, since deceased. The appellants stressed upon their title through Sashi Bhusan Sen, since deceased.
- 8.** Learned senior advocate appearing for the appellants submits that since, admittedly, notice of the probate proceeding was not served upon any of the appellants, the issue of limitation does not arise. He contends that, the grant of probate, therefore, should be set aside with liberty be granted to the appellants to contest the probate in accordance with law.
- 9.** Learned advocate appearing for the respondent submits that, the appellants were well aware of the probate proceeding. He draws the attention of the Court to the averments made in the application for revocation of the grant of probate. He submits that, in a collateral proceeding, the appellants were made aware of the grant of probate. Thus, despite the appellants being aware of the grant of probate, they did not take any steps within the period of three years from the date of knowledge of the grant of probate. He points out that in respect of one of the immovable properties of the estate of the deceased Gouriprova Sen, mutation proceeding occurred in which, the factum of grant of probate was discussed.

- 10.** Learned advocate appearing for the respondent relies upon (2008) 8 Supreme Court Cases 463 (Kunvarjeet Singh Khandpur - Vs- Kirandeep Kaur and Others), AIR 2017 Supreme Court 5453 (Mrs. Lynette Fernandes -Vs- Mrs. Gertie Mathias Since Deceased by LRS) and AIR 2019 Supreme Court 4948 (Ramesh Nivrutti Bhagwat -Vs- Dr. Surendra Manohar Parakhe) in support of the contention that the application for revocation of grant of probate is barred by laws of limitation.
- 11.** As noted above, the grant of probate of the Will claimed to be of Gouriprova Sen, since deceased, is under consideration.
- 12.** Gouriprova Sen died on October 8, 1989. It is alleged that she left behind a Will dated July 9, 1989. In respect of such Will, the respondent, claiming to be the executor therein, applied for grant of probate being PLA/238/1995. Probate of such Will of Gouriprova Sen was granted on September 28, 1995. The application for revocation of grant of probate was made in the month of July, 2022.
- 13.** It is admitted at the Bar that no notice of the probate proceeding was issued upon any of the appellants.
- 14.** Genealogical table annexed to the application for revocation of the grant of probate, is not disputed by the parties. The family tree, commences from Ramkamal Sen. There were two sons of Ramkamal Sen, namely, Bidhu Bhusan Sen and Sashi Bhusan Sen. There was one son of Bidhu Bhusan Sen, namely, Amulya Charan Sen, Gouriprova Sen, since deceased was the wife of Amulya Charan Sen. Amulya Charan Sen and Gouriprova Sen

died without any children. Therefore, on the death of Gouriprova Sen and with her husband predeceasing her, the estate of Gouriprova Sen will revert to the branch of Sashi Bhusan Sen. There were two sons of Sashi Bhusan Sen. In accordance with the undisputed family tree, Jatindra Nath Sen was one of the sons of Sashi Bhusan Sen who expired unmarried and other son of Sashi Bhusan Sen was Sachindra Nath Sen. There were two sons of Sachindra Nath Sen, namely, Sanka Prasad Sen and Aswini Sen. The appellant nos. 1 and 2 are the son and daughter of Aswini Sen while, Sanka Prasad Sen, the appellant no.3, is the son of Sachindra Nath Sen.

- 15.** Nothing is placed before us to suggest, let alone establish that, on the death of Gouriprova Sen, her estate will not devolve upon the appellants. Appellants before us are the heirs and legal representatives of Gouriprova Sen, who would otherwise succeed to the estate of Gouriprova Sen, if Gouriprova Sen expired without leaving behind a Will.
- 16.** Admittedly, notice of the probate proceeding was not served upon any of the appellants before us. Knowledge of the probate proceeding by the appellants was derived through collateral proceeding.
- 17.** We are unable to accept the contention that the appellants knew of the probate proceedings when, it was the obligation of the respondent before us and as an executor applying for grant of probate of a Will of a deceased to cause service of notice upon the

heirs and legal representatives of the deceased in respect of whose estate, grant of probate was sought.

18. The respondent before us by not performing and discharging obligations in accordance with law cannot contend that he discharged such obligations by relying upon a collateral proceeding. Secondly, the respondent before us was well aware of the contested claim in respect of the immovable properties of the deceased. The appellants mutated their names in respect of the immovable properties belonging to the deceased. In such mutation proceeding, the grant of probate was taken as a point by the respondent before us. It is only thereafter that, the appellants approached to the High Court from where the probate was granted for its revocation.

19. Kunvarjeet Singh (Supra) held that, Article 137 of the Limitation Act applies to an application for revocation of grant of probate and letters of administration. In the facts of such case, the application for grant of probate was withdrawn. Application for grant of letters of administration was filed within 3 years from the date of withdrawal of the proceeding which was held to be not barred by limitation. Facts and circumstances of the present case are different.

20. In Mrs. Lynette Fernandes (Supra) application for revocation of the grant of probate was filed 36 years after grant thereof. In the facts of that case, a daughter claiming to be minor at the time of grant of probate, sought revocation of the probate granted in favour of a mother that too after 36 years of the grant.

- 21.** In *Ramesh Nivrutti* (Supra) Supreme Court held that, as no specific period of limitation was prescribed under the Succession Act 1925, for cancellation of probate or letters of administration, such proceedings are covered under article 137 of the Limitation Act, 1963. It also held that an application for revocation was required to be filed within 3 years from the date when the right to apply accrues.
- 22.** In the facts and circumstances of the present case, as noted above, no notice of the application for grant of probate was served upon any of the appellants. Appellants derived knowledge of the probate being granted from the mutation proceeding. The appellants, therefore, applied to the High Court for revocation of the grant of probate. Nothing is placed before us to establish that the application for revocation was filed in excess of 3 years from the date of obtaining knowledge of the grant of probate by the appellants.
- 23.** Since the probate was obtained by the respondent without citing the heirs and legal representatives of the deceased Gouriprova Sen, we set aside the probate granted. We set aside the judgment and order also.
- 24.** In the facts of the present case, it would be in the interest of justice, if we permit the respondent, if so advised, to continue with the application for grant of probate and to prove it in solemn form. The appellants may file caveat, and affidavit in support of caveat, if not already filed within four weeks from date. On the

filing of the caveat, the probate proceedings are to be treated as contentious cause.

25. APO/125/2023 is, therefore, disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

26. I agree

(MD. SHABBAR RASHIDI, J.)