

IN THE HIGH COURT AT CALCUTTA

TESTAMENTARY AND INTESTATE JURISDICTION

Present :
THE HON'BLE JUSTICE ARINDAM MUKHERJEE

P.L.A. No. 340 of 2022

IN THE GOODS OF :
Mandira Laha, Deceased

For the Petitioner : Mr. Sandipto Bose,
Ms. Urbi Roy,
Mr. Anirban Ghosh,

..... Advocates

Heard on : 4th December, 2025

Judgment on : 9th December, 2025

Arindam Mukherjee, J:

1. This is an application for grant of probate of the last Will and Testament dated 21st December, 2021 (hereinafter referred to as the said will) left behind by Mandira Laha, wife of Late Cecil Laha who died on 6th February, 2022. The testatrix at the time of death was an Indian Christian and resided at 323, Jodhpur Park, Flat No.8, 3rd

Floor, Kolkata-700068 (hereinafter referred to as the said premises). The testatrix left behind the said premises as the only property and asset comprising her estate where she breathed her last. The only legal heir of the testatrix is her son who is a resident of United States of America (USA) and has been duly cited. No one has come forward to oppose the grant. The department has also issued the “no objection certificate”. The will has been sought to be proved in common form by the affidavit filed by one of the attesting witnesses.

2. The word “Indian Christian” is defined in Section 2(d) of the Succession Act, 1925 (hereinafter referred to as 1925 Act). Section 213 (2) of the 1925 Act with regard to Indian Christian has been amended in 2002 by which the said Section 213 has been made not applicable in the Indian Christians.
3. This application is filed in this Court invoking the concurrent jurisdiction of this Court inasmuch as the testatrix died outside the City Civil Court jurisdiction but within the State of West Bengal having the only immovable property also outside such jurisdiction but with the State. The invocation of concurrent jurisdiction therefore, gives rise to controversy as to whether it is under Section 300 of the 1925 Act or under clause 34 of the Letters Patent, 1865 in view of the law as it stands now.

4. In view of the present legal position read with the various judgements operating in this field, the following questions fall for consideration in the instant case:
- (i) Is the provisions of The Succession Act, 1925 applicable to Indian Christians?
 - (ii) Is probate of a will necessary to be obtained in the case of an Indian Christian like the testatrix?
 - (iii) If probate is necessary, then in which Court, if an Indian Christian dies in the State of West Bengal leaving properties and assets also within the State, the application for grant of probate or letters of Administration is required to be filed?
 - (iv) Is the provisions of Clause 34 of Letters Patent, 1865 available to an executor of the Will or to an Administrator of the estate of an Indian Christian to approach the High Court directly by invoking jurisdiction under Clause 34 of Letters Patent, 1865 or he has to take recourse of the provisions of Section 300 of the Succession Act, 1925 to approach this Court?
5. Before going into further discussion, the relevant provisions of the City Civil Courts Act, 1953 as it stood after 1980 Amendment and Clause 34 of the Letters Patent, 1865 are set out hereinbelow.

Section 5(3) of the City Civil Courts Act, 1953 :

“5. Jurisdiction. –

(1)The local limits of the jurisdiction of the City Civil Court shall be the City of Calcutta.

2)Subject to the provisions of sub-sections (3) and (4),[* *] [Words and figure omitted by West Bengal Act 35 of 1969.] the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature, not exceeding [rupees ten lakhs] [Words first substituted by West Bengal Act 35 of 1969. Thereafter, those words again] in value.*

[Provided that the City Civil Court and the High Court at Calcutta shall have concurrent jurisdiction to try suits and proceedings of a civil nature, the value of which exceeds rupees ten lakhs but does not exceed rupees one crore.] [Inserted by Notification Act No. 18 of 2013, dated 10.10.2013.]

(3)[The City Civil Court shall have jurisdiction and the High "Court shall not have jurisdiction to try any proceeding under-] [Sub-section (3) substituted by West Bengal Act 60 of 1980.]

(i)the Guardians and Wards Act, 1890,

[* * * *] [Words. figures and brackets omitted by West Bengal Act 19 of 1982.]*

(iii)the Indian Lunacy Act, 1912,

(iv)the Indian Succession Act, 1925.

(4)The City Civil Court shall not have jurisdiction to try suits and proceedings of the description specified in the First Schedule.

(5)All suits and proceedings which are not triable by the City Civil Court shall continue to be triable by the High Court or the Small Cause Court or any other Court, tribunal or authority, as the case may be, as heretobefore.

21. Act to override other law including Letters Patent. –

The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law, including in particular the Letters Patent of the High Court.

22. Amendments to certain enactments. –

The enactments specified in the Second Schedule are hereby amended in their application to West Bengal to the extent and in the manner mentioned in the fourth column of such Schedule.

<i>Year</i>	<i>Number</i>	<i>Short Title</i>	<i>Amendments</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
1925	39	Indian Succession, Act, 1925	(1) To clause (bb) of section 2, the following proviso shall be added: - "Provided that as respect the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court at Calcutta references to a District Judge in this Act shall be construed as references to the City Civil Court established under the City Civil Court Act, 1953." (2) In section 273, clause (a) of the proviso shall be omitted. (3) In section 274, for sub-section (1), the following sub-section shall be substituted: "(1) Where probate or letters of administration has or have been granted by a District Judge with the effect referred to in the proviso to section 273, the District Judge shall send a certificate thereof to the High Court to which such District Judge is subordinate and to each of the other High Courts." - 4) Section 300 shall be omitted. (5) For Schedule IV, the following Schedule shall be substituted:-
1925 (Contd.)	39 (Contd.)	Indian Succession, Act, 1925.	"Schedule IV [See section 274 (2)] Form Of Certificate I., A. B., hereby certify that on the day of granted probate of the will (or letters of administration of the estate) of C.D., late of deceased, to E.F. of... and G.H. of and that such probate (or letters) has (or have) effect over all the property of the deceased throughout India."

Clause 34 of the Letters Patent, 1865:

“34. Testamentary and intestate jurisdiction.- And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority as that which may now be lawfully exercised by the said High Court, except within the limits of jurisdiction for that purpose of any other High Court established by Her Majesty’s Letters Patent, in relation to the granting of probate of last Wills and Testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate whether within or without the said Bengal Division, subject to the Orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established: provided always, that nothing in these letters patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probate and letters of administration.”

6. The Amendment of the City Civil Courts Act, 1953 in 1980 fell for consideration before a Single Bench which is reported in **1984 (1) CLJ 365 [In the Goods of Sailendra Nath Sarkar]**. The learned Judge in paragraph 31 of the report opined that deletion of Section 300 of 1925 Act in the Second Schedule of the 1953 Act *“has deprived of the High Court’s concurrent jurisdiction not only in respect of the matters triable by the City Civil Court but in respect of jurisdiction exercisable under the Indian Succession Act by the District Judge throughout the State of West Bengal”*. In this background the learned Single Judge in paragraph 37 of the said judgment has held as follows:-

“37. It appears to me that S. 5(3) of the City Civil Court Act as amended has affected the testamentary and intestate jurisdiction

conferred on the High Court by clause 34 of the Letters Patent only in cases arising exclusively within the territorial jurisdiction of the City Civil Court, i.e. where the deceased has died having a fixed place of abode and leaving all the assets within the City of Calcutta as defined by S. 2(3) of the City Civil Court Act. If either deceased has died having a fixed place of abode or leaving any allot outside the City of Calcutta but within the State then the High Court shall have jurisdiction to grant probate of letters or administration as the case may be under clause 34 of the Letter Patent).”

The object of the 1953 Act is to establish an Additional Civil Court for the City of Calcutta. The 1953 Act, therefore, is procedural in nature.

The substantive law is the 1925 Act which governs the entire subject as also the powers and authorities available to a District Judge. It is needless to mention that the 1953 Act does not govern the Succession Law in the whole of West Bengal but is confined only in respect of the City of Calcutta as apparent for the said 1953 Act.

7. The case in Sailendra Nath Sarkar (supra) then fell for consideration before another Single Bench in the judgment reported in **1989 (1) CLT 426 [In the goods of Tarak Bala Dasi]** . The learned Single Judge in the said judgement held as follows:

- (i) If the abode and assets left behind by the deceased are outside the jurisdiction of the City Civil Court or the Original Side jurisdiction of this Court, then this Court can exercise jurisdiction under Clause 34 of Letters Patent.
- (ii) Where the assets left behind by the deceased is situated outside the jurisdiction of the State (West Bengal) the High Court (this Court) cannot exercise jurisdiction under Clause 34 of Letters Patent.
- (iii) Where the property is situated within the State or Bengal Division but partly outside the jurisdiction of City Civil Court and the place of abode is within the jurisdiction of the City Civil Court then after the 1980 Amendment Act, this Court cannot exercise jurisdiction over the testamentary proceedings in exercise of jurisdiction under Clause 34 of the Letters Patent.

8. Sailendra Nath Sarkar (supra) and Tarak Bala Dasi (supra) again fell for consideration before another Single Bench in the judgment reported in **2006 (2) CLJ 460 [Prabir Kumar Das vs. Jayanti Das & Anr]** . The learned Single Judge in the said judgment held that:

“11. In the case of Sailendranath Sarkar (supra) the deceased had the place of abode as well as the properties within the district of Howrah. It was contended before the learned Single Judge that the jurisdiction of the High Court conferred upon it under Clause 34 of the Letters Patent was taken away by the amendment of section 5(3). Learned Judge discussing the law in detail ultimately came to a finding that Clause 34 was retained by section 300(1) and could not have been taken away by the amendment of section 5(3) of the City Civil Courts Act which had its enforcement within the city of Calcutta and not beyond that.

12. *In the case of Tarak Bala Dasi (supra) the deceased was having place of abode within the jurisdiction of City Civil Court at Calcutta. Properties were left within Calcutta. However, the deceased was also having property at Kashi outside the State of West Bengal. His Lordship held that Clause 34 did not empower the High Court to deal with the properties situated outside the State of West Bengal. His Lordship further held that the High Court could entertain the application for probate in respect of the properties which were situated within the State of West Bengal as contemplated under the Letters Patent but outside the jurisdiction of the City Civil Court because of such amendment. His Lordship ultimately held that the application was not maintainable in the High Court because it involved property outside Bengal.*

13. *Considering these two Single Benches decision I am of the view that the learned Judges accurately interpreted the relevant provision of the statute and I do not find any scope of disagreement with Their Lordships. As I have already observed hereinbefore, the legislature by virtue of the amendment of the City Civil Courts Act cannot confer jurisdiction on the City Civil Court over the properties or place of abode outside the territorial jurisdiction of the said Court. In the first case being Sailendra Nath Sarkar (supra) the entire cause of action arose in Howrah. The learned Judge rightly held that the High Court did have the jurisdiction because of Clause 34 and the amended provision of section 5(3) of the City Civil Courts Act did not have any application. In the case of Tarak Bala Dasi (supra) the learned Judge rightly refused to entertain the probate application as the deceased left property outside the State and held Clause 34 not applicable beyond the State of West Bengal.*

15. *The said Act of 1953 was enacted to minimise the load of the High Court in its original side and not for the purpose of ouster of its jurisdiction within the City of Calcutta or otherwise. The object of the Bill was to ensure speedy administration of justice in the City of Calcutta. Section 5(1) of the said Act of 1953 limits the jurisdiction of the City Civil Court within the City of Calcutta. By amendment of sub-section (3) the matters under Indian Succession Act, 1925 were given exclusively to the City Civil Court to the exclusion of the High Court. By that amendment the provisions of section 300(1) of the Succession Act was made inapplicable within the City of Calcutta. In the instant case testator was having his permanent place of abode within the jurisdiction of the District Judge, 24-Parganas (North). Hence, the probate application could also be filed before the District Judge, 24-Parganas (North). In such view of the matter by dint of section 300(1) read with Clause 34 of the Letters Patent the High Court retained its concurrent jurisdiction with the District Judge, 24-Parganas (North) to entertain this application.”*

9. The exclusion of the jurisdiction of this High Court after the 1980 amendment to the 1963 Act fell for consideration before a Division Bench in a judgement reported in AIR 2012 Cal 7 [Pandraj Kunjilal Sadh vs. Santosh Kumari Mahendra Kumar Sadh] which has held as follows:-

“18. *There is no dispute that prior to the coming into operation of the amendment of the City Civil Court Act in the year 1980, in the matter of grant of probate of a Will executed by a Hindu which is governed by the Indian Succession Act, the High Court had concurrent jurisdiction with the District Courts as provided in Section 300 of the Indian Succession Act. So far the District of Calcutta is concerned, the City Civil Court Act had, however, no jurisdiction to entertain probate application being specifically excluded and those probate applications could be entertained by this Court by following the Rules in this behalf prescribed in the Original Side Rules.*

19. *After the amendment of the City Civil Court Act in the year 1980, the provision for grant of probate under the Indian Succession Act has been totally taken away from this Court and has been conferred upon the City Civil Court notwithstanding the provision contained in the Letters Patent and the consequent Rules mentioned in the Original Side Rules.*

20. *Therefore, after the aforesaid 1980 Amendment, any application under the Indian Succession Act for grant of probate can no longer be entertained by this Court in its Original Jurisdiction but should be entertained by the City Civil Court at Calcutta if the cause of action for filing such application has arisen within the limits of the Original side.*

21. *After hearing the learned Counsel for the parties, we find substance in the contention of Mr. Bachawat that so far probate of a Will executed by a Hindu is concerned, the same can be applied for only under the provisions of the Indian Succession Act and there is no other provision of law now prevailing in this country for dealing with such an application.*

22. *In respect of probate of a Will over which the Indian Succession Act has no application, in our opinion, this Court can entertain such application provided the cause of action for filing such application arises within the territorial limits of this Court. For instance, by Section 58 of the Indian Succession Act, grant of probate of a Will executed by a Mohammedan is totally excluded from the operation of that Act and thus, in respect of a Will executed by a Mohammedan testator, this Court in exercise of power of Letters Patent read with Original Side Rules can still entertain such application and dispose of the same provided the cause of action for filing such application arises within the territorial limit of this court because for governing such an application one is not required to resort to the provisions contained in the Indian Succession Act which specifically excludes its operation in respect of a Will executed by a Mohammedan testator.*

23. *We, therefore, find that in the case before us where the testator was a Hindu who died outside the State of West Bengal but had a property within the territorial limit of the Original Side of this Court, the application for probate can after the 1980 amendment be filed not in this Court but in the City Civil Court at Calcutta alone and the learned Single Judge was quite justified in dismissing the application.”*

10. On an analysis of the Three Single Bench judgments as aforesaid and the Division Bench Judgment in Pandraj Kunjilal (supra) it is apparent that the jurisdiction of the High Court under Clause 34 of the Letters Patent, 1865 got executed with the 1980 Amendment to the 1953 Act. Save and except in respect of wills to which the Succession Act, 1925 are not applicable. The Division Bench in that case was considering a case where the testator died at Mumbai and had left behind an immovable property within the Ordinary Original Civil Jurisdiction of this Court. The Division Bench held that in such a case this Court had no jurisdiction to receive, try and determine an application for grant of probate or Letters of Administration considering the deceased to be a Hindu governed by the Mitakshara Law. The Division Bench also held that the exclusion of the provisions of Clause 34 of Letters Patent in case of testamentary jurisdiction of this Court shall be considered to be an amendment right by a competent legislative as per the last limb of Clause 34. The exception carried out in that case in s a Mahammedan Will to which application of Succession Act is excluded by operation of Section 58 of the 1925 Act.

11. Pandraj Kunjilal (supra) fell for consideration in a recent Division Bench judgment in **(2025 SCC OnLine Cal 7999) (In the goods of Prabir Chandra Sen)**. The Division Bench in the said judgment had held as follows:

“21. *In the light of the aforesaid discussion, any confusion that may be there as regards the power/jurisdiction of this Court to grant probate or Letters of Administration is clarified as follows:—*

(i) After the amendment of the City Civil Court Act, 1953, by the Amendment Act of 1980, this Court has no jurisdiction to grant probate or Letters of Administration in respect of cause of action arising exclusively within the ordinary original civil jurisdiction of this Court which is co-extensive with the territorial jurisdiction of the City Civil Court at Calcutta. This means that if the testator had his place of residence within the jurisdiction of the City Civil Court and left all properties situate within that jurisdiction, the City Civil Court will have exclusive jurisdiction in the matter of grant of probate or Letters of Administration. In such case, the High Court will have no jurisdiction.

(ii) If the testator had his place of residence outside the limits of the territorial jurisdiction of the City Civil Court and/or left any of his properties outside that jurisdiction but within the State of West Bengal, the High Court will have concurrent jurisdiction along with the concerned District Court to grant probate or Letters of Administration.

(iii) We further clarify that notwithstanding the omission of Section 300 of the IS Act by the 1980 amendment of the City Civil Court Act, 1953, the jurisdiction of the High Court under Clause 34 of the Letters Patent, 1865, to grant probate or Letters of Administration remains unaffected in cases arising outside the territorial jurisdiction of the City Civil Court.

*(iv) We are in complete agreement with the decision of a learned Single Judge of this Court, in the case of **In the goods of : Sailendra Nath Sarkar, Deceased, Supra.**”*

12. On a conjoint reading of the provisions of the City Civil Courts Act, 1953 in the context of Clause 34 of Letters Patent, 1865 in the light of

all the judgements referred to hereinabove, the undisputed ratio are as follows:-

- (a) The City Civil Court shall have the jurisdiction and the High Court at Calcutta shall have no jurisdiction to try any proceeding under the Succession Act, 1925 with regard to any will or administration of the estate, the cause of action whereof accrues within the Ordinary Original Civil Jurisdiction of this Court.
- (b) The cause of action for an application for grant of probate or letters of Administration depends on the place of abode of the deceased and jurisdiction within which the deceased have left behind his properties and assets. The value of the estate is inconsequential as there is no pecuniary jurisdiction with regard to exercise of testamentary jurisdiction
- (c) The City Civil Court at Calcutta is the Principal Civil Court of Original jurisdiction so far as matters relating to the Succession Act, 1925, where the cause of action arises within the Ordinary Original Civil Jurisdiction of this Court which is the same that the City Civil Court so far as it relates to the terminal jurisdiction.
- (d) The High Court, (this Court) however, retains the concurrent jurisdiction to receive, try and determine an application for grant of probate or letters of administration save an except for the jurisdiction of the City Civil Court.

(e) The High Court despite the 1980 Amendment to 1953 Act retains jurisdiction under Clause 34 of Letters Patent, 1865 though Section 21 of the 1953 Act has an overriding effect over letters Patent and the competence of State legislature to undertake any legislation in respect of the personal laws of the parties prevalent immediately before commencement of the Constitution has been approved by the Supreme Court in the judgement reported in **2001 (4) SCC 325 [Clarence Pais and others vs. Union of India]** while considering the effect of Kerala Amendment Act, 1986 which with effect from 14.03.1997 brought a change to Section 213 of the 1925 Act. In this connection, one can gainfully refer to paragraph 4 of Clarence Pais (supra) which is set out hereunder:

A portion of paragraph 4 of Clarence Pais (supra) at SCC page 329:

“So far as marriage and divorce, infants and minors, adoption, wills, intestacy and succession, joint family and partition and all matters in respect of which parties in judicial proceedings were immediately before the commencement of the Constitution subject to their personal law, it is open to the State Legislatures to undertake any legislation of the nature of Section 213 of the Act. The State Governments bring in changes in personal law from time to time as per the social conditions prevailing in the particular States. Therefore, the amendment made in the State of Kerala would not discriminate the persons residing in other parts of the country. The contention is that the classification has achieved social acceptance as is evident from the fact that it has been in existence in the statute-book for quite a long time and it is not established how such classification in the statute suffers in any manner from discrimination, and the provisions being procedural in nature are intra vires the Constitution. It is further submitted that the Central Government has been consistently following a policy of non-

interference in the personal laws of the minority communities unless the necessary initiative for amendments or repeal from a majority or sizeable cross-section of the community arises.”

- (f) The jurisdiction of High Court as in the proviso to Section 273(a) of the 1925 Act has been taken away in respect of the jurisdiction of Ordinary Original Civil Jurisdiction of this Court with the said provision having stood omitted by the 1953 Act.
- (g) The concurrent jurisdiction available to the High Court under Section 300 of the 1925 Act cannot also be invoked by this Court in case of matter relating to the 1925 Act for the area comprised under the Ordinary Original Civil Jurisdiction of this Court.

13. The learned Single Judge, in Sailendra Nath Sarkar (supra) has held that deletion of Section 300 of the 1925 Act through the amendment to the second schedule to 1953 Act has not only taken away the concurrent jurisdiction of this Court exercisable under Section 300 of the 1925 Act not only for the ordinary original jurisdiction of this Court but also for the entire State of West Bengal. On this view having been upheld by the Division Bench in Prabir Chandra Sen (Supra) therefore, means that the High Court (this Court) in respect of Wills and Letters of Administration where the cause of action arise outside the City Civil Court jurisdiction then the High Court will exercise jurisdiction under Clause 34 of Letters Patent on Section 300 having been excluded.

14. This leads to an anomalous situation. The logic given by the Learned Single Judge in *Sailendra nath Sarkar* (supra) is deletion of Section 300 of 1925 Act from the second schedule of 1953 Act has excluded the concurrent jurisdiction available to this Court under Section 300 of the 1925 Act. The learned Judge, however, did not notice that in the same schedule Clause (a) of the proviso to Section 273 of the 1925 Act has also been deleted. Going by the said logic then Clause (a) of the proviso to Section 273 of the 1925 Act on having been deleted takes away the jurisdiction available to the High Court (this Court) to operate as a High Court in a distinct manner from the District Judge as in Clause (b) to the proviso to Section 273 of 1925 Act. If that be so then the original jurisdiction available under Clause 34 for the rest of the State of West Bengal also gets excluded. The High Court (this Court) is, therefore, left with the concurrent jurisdiction under Section 300 of the 1925. The High Court (this Court) therefore, at the same time assume jurisdiction under Section 300 of the 1925 Act for rest of the State of West Bengal and then has to dispose of the proceedings by exercising jurisdiction under Clause 34 of Letters Patent, 1865. This fact escaped the notice of the Division Bench in *Prabir Chandra Sen* (supra) The Division Bench in *Prabir Chandra Sen* (supra) has not clarified this position but has simple held that High Court (this Court) is left with the concurrent jurisdiction as also remains vested with the jurisdiction under Clause 34 of the Letters Patent, 1865.

15. Even if we ignore this complication then also as held in Tarak Bala Dasi (supra) after considering the view of Sailendra nath Sarkar (supra) that this Court under Clause 34 of the Letters Patent, 1865 cannot grant probate or letters of administration to properties and assets situate outside the State of West Bengal cannot be brushed aside. When this judgment has been upheld by the Division Bench in Prabir Chandra Sen (supra)

16. In Pandraj (supra) the Division Bench had overruled the finding of Sailendra nath Sarkar (supra), Tarak Bala Dasi (supra) and Prabir Chandra Das (supra) to the extent that despite 1980 amendment the jurisdiction of High Court (this Court) under Clause 34 of Letters Patent is retained by clarifying that the exercise of such jurisdiction is open to a limited extent that is to the wills or estate to which the provisions of Succession Act is not applicable like Mohameddan Will or estate which stands excluded for the provisions contained in Section 58 of the 1925 Act through Section 5(3) of the 1953 Act has completely taken away the jurisdiction of this Court in entertaining matters under the Succession Act. The findings in Pandraj (supra) therefore, carved out exceptions where clause 34 is available through the 1953 Act has taken away the jurisdiction in respect of Succession Act.

17. The jurisdiction of this Court under Clause 34 of Letters Patent was for the entire Bengal Province which is now the State of West Bengal. The 1953 Act took away the testamentary jurisdiction of this Court in respect of the

territorial jurisdiction vested on City Civil Court with the exception as to will and estate to which the provisions of 1925 Act is not applicable.

18. It is therefore, necessary to ascertain under which provision i.e. under Clause 34 of Letters Patent, 1865 or Section 300 of 1925 Act, the jurisdiction of this Court for Wills and Letters of Administration will be invoked where the cause of action arises outside the City Civil Court jurisdiction but within the State of West Bengal. In such cases whether High Court will be exercising concurrent jurisdiction under Section 300 of the 1925 Act or the original jurisdiction under Clause 34 of the Letters Patent, 1865.

19. The Division Bench in Prabir Chandra Sen (supra) has held that the High Court is vested with the concurrent jurisdiction as well as it retains the jurisdiction under Clause 34 of Letters Patent by upholding the view expressed in Sailendra Nath Sarkar (supra). Thereby differing from the view expressed by another Division Bench in Pandraj Kunjilal (supra), without overruling the same. The view expressed by the Division Bench in Prabir Chandra Sen (supra) cannot be also construed to have impliedly overruled the judgment in Pandraj Kunjilal (supra) as in that case, the Division Bench had expressed that the jurisdiction of this Court under Clause 34 of Letters Patent, 1865 so far as it relates to the area of operation of the City Civil Court at Calcutta is completely taken away but available in a limited form with regard to the Will or estate not covered by the Succession Act, 1925.

The Division Bench in *Prabir Chandra Sen* (supra) in fact agreed with the view expressed by the Division Bench in *Pandraj Kunjilal* (supra) so far as the exclusion of the jurisdiction of this Court in respect of Wills and Letters of Administration wherein the cause of action arose within the jurisdiction of City Civil Court. In *Pandraj Kunjilal* (supra) the Division Bench had held that jurisdiction of this Court under Clause 34 is retained in the case of a Will or Letters of Administration to which the provisions of the Succession Act does not apply. The Division Bench in that case was dealing with the City Civil Court's jurisdiction so the observation of the Division Bench meant jurisdiction of this Court even when it is excluded by the 1980 amendment to the 1953 Act remains in the cases where the provisions of Succession Act does not apply and gave example of a Mohameddan Will in view of the provisions of Section 58 of the 1925 Act. The Division Bench in *Prabir Chandra Sen* (supra) held that this Court retains jurisdiction under Clause 34 of Letters Patent even after the 1980 amendment and at the same time is empowered to exercise concurrent jurisdiction. None of the Division Benches have, however, clarified the position in respect of Will or estate where the deceased had an abode outside the jurisdiction of the City Civil Court but within the State of West Bengal and had also left behind assets and properties within the State of Bench but outside the jurisdiction of the City Civil Court.

20. In this legal backdrop, after considering the relevant provisions of law, the judgements discussed hereinabove, I am of the view that to give a

purposive interpretation of the amendments made to the 1953 Act in 1980 read in consonance with the provisions of the 1925 Act and the views expressed in various judgments discussed hereinabove, it is to be held in respect of the probate of a Will or Letters of Administration wherein the deceased had a place of abode outside the jurisdiction of the City Civil Court and the properties and assets left behind by such deceased are even partly outside the jurisdiction of the City Civil Court, the jurisdiction of this Court can be invoked only under the concurrent jurisdiction available under Section 300 of the 1925 Act. The original jurisdiction available to this Court under Clause 34 of the Letters Patent, 1865 is not available for the application for grant of probate or Letters of Administration wherein the cause of action to file the same arise outside the ordinary original civil jurisdiction of this Court being the same as the jurisdiction of the City Civil Court.

21. In the instant case, since the deceased is an Indian Christian, the succession is governed by the provisions of the 1925 Act. This will be amply clear from the following judgments:

- a) 1986 (2) SCC 209 (paragraph 5) : (Mary Roy & Ors. vs. State of Kerala & Ors.)***
- b) 2012 (13) SCC 80 (paragraph 14) : [Mathai Samuel & Ors. v. Eapen Eapen & Ors.]***

c) 2017 SCC Online Kerala 17648 (paragraph 38) : [Kurian @ Jacob, By Advs. Sri. Mathew John (K) Sri. Baby Thomas v. Mrs. Chellamma John & Ors.]

c) 2025 SCC Online Kerala 78 (paragraph 38) : [Ambily Jose v. Sub Registrar & Ors.] (paragraphs 7 and 8)

In light of the aforesaid judgments, the Will left behind by the testatrix is not exempted from the purview of the 1925 Act like a Mohameddan Will in view of the provisions of Section 58 of the 1925 Act as observed by the division Bench in Pandraj Kunjilal (supra).

22. The testatrix being an Indian Christian who had her place of abode at the time of her death outside the ordinary original civil jurisdiction of this Court and having left the only property comprised in her estate also outside the said jurisdiction, the testatrix had to invoke the concurrent jurisdiction of this Court available under Section 300 of the 1925 Act.

23. So far as the issue as to whether an Indian Christian has to apply for a grant of probate is concerned, the provisions of Section 213 (2) of the 1925 Act inserted in 2002 clearly exempts an Indian Christian like the testatrix for which the executor is not required to apply for obtaining grant of probate. The same provisions applies to applications for Letters of Administration for the estate of an Indian Christian. This position has been further clarified in the judgment reported in **Clarence Pais v. Union of India, (2001) 4 SCC 325** and **2017 SCC Online Hyderabad 38 (Lalitha**

Christian & Ors. v. Govt. of A.P. & Ors.). The bar under the validity of Section 213 of the 1925 Act in the light of Kerala amendment has also been considered in the judgment of the Supreme Court reported in Clarence Pais (supra). Section 213 was also considered **2006 (10) SCC 442 (Binapani Kar Chowdhury v. Satyabrata Basu & Anr.) paragraph 6, 7 and 8.** Even in a Single Bench judgment reported in **2003 SCC Online Cal 13, Bimla Kar & Anr. v. A. and N. Administration & Ors.**, it has been held that probate is not necessary in case of properties situate and lying in Andaman and Nicobar Islands. The validity of Section 118 of the 1925 Act has also been upheld in the judgment reported in **2003 (6) SCC 611 (John Vallamattom & Anr. vs. Union of India)**

24. Although, an Indian Christian is not required to apply for grant of probate of an Will or apply for Letters of Administration but if apply the Court is empowered to adjudicate the same. This view has been clarified by the Hon'ble Supreme Court in judgment reported in **2005 (12) SCC 503 Balbir Singh Wasu v. Lakhbir Singh & Ors.**

25. In the instant case, the jurisdiction of this Court has been correctly invoked by the applicant. Citations have been issued. No one has come forward to object to the grant. The Department on complete scrutiny has issued a "No Objection Certificate". The Will has been proved in common form by the affidavit of the attesting witness. The only immovable property being the subject matter of the Will is also situated within the State of West

Bengal. In the aforesaid facts and circumstances, the probate is granted by allowing the application for the same.

The application being PLA No. 340 of 2022 is accordingly disposed of.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

Arindam Mukherjee, J.