

23.06.2026
Item No.20
Court No. 6
MKP

C.O. 1021 of 2026

Ghanshyam Das Harnathka And Ors.
-Vs-
Vinty Khemani And Ors.

Mr. Shahjahan Hussain
.....**for the Petitioner**

Mr. Siddhartha Banerjee
Mr. Anjan Bhandari
.....**for the Respondents**

1. This revisional application is directed against an order dated January 15, 2026 passed by the Learned Additional District Judge, 10th Court, at Alipore, whereby a proceeding for grant of probate has been converted to one for grant of letters of administration.
2. The following facts are not in dispute.
 - a) Initially, an application for grant for probate had been filed by one Mr.Krishan Kumar Agarwal, the Executor of a Will left by one Ms. Krishna Debi Agarwal (since deceased). The said proceeding became contentious and was registered as O.S.No.02 of 1999. The said suit got dismissed for default on April 29, 2015. In the meanwhile, the Executor who had initiated the proceeding for probate passed away on April 7, 2015.

- b) Upon demise of the said Executor, the opposite parties filed an application for restoration of the said suit (O.S.No.2 of 1999). Such application for restoration was allowed on November 5, 2016.
- c) Thereafter, the opposite parties filed an application under Section 232 of the Indian Succession Act, 1925 praying for conversion of the proceedings for grant of probate to proceedings for grant for letters of administration.
- d) Subsequently, the opposite parties filed an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 praying for amendment of the application for grant of probate and on the same day, the opposite parties withdrew their application under Section 232 of the Indian Succession Act, 1925.
- e) The said application under Order 6 Rule 17 was allowed by the Learned Trial Court on contest by an order dated September 28, 2018. On such application being allowed, in terms of the direction passed by the Learned Court, the opposite parties filed their amended plaint on October 12, 2018.
- f) Subsequently, it was observed by the Learned Trial Court that “due to inadvertent mistake” the application under Section 232 of the Indian Succession Act, 1925 had been endorsed as “not pressed”. The learned Trial Court therefore

treated the said application as pending and disposed it of thereby converting the proceeding from one for grant of probate to a proceeding for grant of letters for administration.

- 3.** Feeling aggrieved thereby, the petitioners have approached this Court by filing the present revisional application.
- 4.** Mr. Hussain, learned advocate appearing for the petitioners submits that the order impugned suffers from a jurisdictional error inasmuch as, the Learned Trial Court could not have resurrected a dead of cause of action.
- 5.** It is submitted by the petitioner that once the learned Court had passed an order recording that the petition under Section 232 of the Hindu Succession Act had not been pressed, then the same could not have been treated as pending and the proceedings for grant of probate could not have been converted to proceedings to grant of letters of administration.
- 6.** Mr. Banerjee, learned advocate appearing for the opposite parties, submits that the order impugned is in fact a repetition of the earlier order September 28, 2018, by which the opposite parties' application for amendment of plaint was allowed. He has taken this Court through the application of amendment to indicate that the said application was veritably an application for

conversion of the proceedings for grant of probate to proceedings for grant of letters for administration.

7. He submits that upon such application being allowed, the proceedings in fact stood converted to one for grant of letters for administration and the second order should not be a cause for the petitioner to be aggrieved by.
8. In support of his contention, Mr.Banerjee relies on a judgment of the Hon'ble High Court at Delhi, in the case of ***Digvijai Singh and Another Versus State and Others***, reported at **2024 SCC Online Del 2204**.
9. Heard learned advocates appearing for the respective parties and considered the materials on record.
10. It is not in dispute that an application for amendment had been filed on April 18, 2018 and it was on the same date that the earlier application under Section 232 of the 1925 Act was not pressed.
11. On a perusal of the application for amendment especially, paragraphs 5, 13 and 15 of the schedule of amendment (at pages 22 to 23 of the revisional application) in the said application - it would be abundantly clear that such application was in effect an application for conversion of the

application for grant of probate to grant of letters of administration.

12. Such application was allowed on contest by the learned Trial Court on September 28, 2018 and direction was issued to file amended plaint which was done on October 12, 2018. In such view of the matter there is substance in the submission of Mr. Banerjee that the proceedings for grant of probate in effect stood converted to proceedings for grant of letters of administration on the said date itself (i.e. on October 28, 2018).
13. It will be evident from the facts recorded in paragraphs 6 to 8 of the judgment of the Hon'ble Delhi High Court, in the case of ***Digvijai Singh and Another Versus State and Others (Supra)***, that in a situation similar to the one in the case at hand, the Hon'ble Delhi High Court had allowed amendments to be carried out and had permitted conversion of the proceedings for grant of probate to proceedings for grant of letters of administration, upon such amendment.
14. Indeed it is well settled that procedure is only a handmaid of justice and not its mistress. The application for amendment was substantially one praying for conversion of the proceedings for grant probate to proceeding for grant of letters of administration and that being so, mere non-mentioning or wrong-mentioning of the provision

of law and or presenting the petition under incorrect caption would invalidate the proceeding itself.

- 15.** The facts mentioned hereinabove would indicate that upon the order dated September 28, 2018 being passed and the amended plaint being filed there could have been no requirement for passing any further order for conversion of the probate proceedings to proceedings for grant of letters of administration as such conversion had already been done.
- 16.** In such view of the matter the order dated January 15, 2026 can be taken as a clarification of the earlier order of amendment, whereby the proceedings for grant of probate stood converted to proceedings for grant of letters of administration.
- 17.** With the aforesaid observations, C.O.1021 of 2026 stands disposed of. There will be no order as to costs.
- 18.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)