Item No.21
25.11.2026
Court. No. 12
gc/Sandip

FMA 717 of 2026
With
CAN 1 of 2026

Sugata Shankar Roy
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Sugata Shankar Roy (in person)
... for the Appellant.

Mr. Biswajit Mukherjee,
Mr. Debayan Mukherjee,
Ms. Maitrayee Das
... for the KMC.

Mr. Suman Kr. Dutta, Sr. Adv.,
Mr. Bhaskar Mukherjee,
Ms. Deblina Banerjee
... for the Respondent Nos.8 & 9.

1. Affidavit-of-service is taken on record.

2. This is an appeal against an order dated April 1, 2026 passed in W.P.A. 23881 of 2025.

3. By the said order, the learned single Judge dismissed the writ petition on the ground that since a revocation application with regard to the grant of probate was pending, the disputed issues between the appellant and the respondent nos. 8 and 9 could not be decided by the writ court and the mutation of the names of the respondent Nos. 8 and 9, in respect of the property of the testatrix should not be interfered with.

4. The brief facts set forth in the application for appropriate order are as follows :-

5. On 5th February, 2020, a Will in Bengali was executed by Smt. Barsha Ganguli in which the respondent nos.8, 9 and 10 were beneficiaries. On 20th May, 2022, the last Will and Testament of Smt. Ganguli was executed.

The appellant was the Executor. He was the family lawyer of Smt. Barsha Ganguli. Smt. Barsha Ganguli expired on 30th October, 2022. On 15th May, 2023, a probate case being PLA 173 of 2023 was filed for grant of probate in respect of the Will dated 5th February, 2020 by the respondent nos.8, 9 and 10. Probate was granted in favour of the said respondents on 13th May, 2024. A deed of gift was executed by the respondent No. 10, one of the beneficiaries of the Will dated 5th February, 2020 in favour of the respondent nos.8 and 9 on 28th November, 2024. On the basis of the said gift deed dated 28th November, 2024, the respondent nos.8 and 9 applied for mutation before the Kolkata Municipal Corporation (hereinafter referred to as "KMC").

6. It appears from the mutation application submitted by the respondent no.8 under Form A-42 that the purpose behind filing the application was "mutation due to succession (intestate)". On the basis of the said application, the KMC proceeded and, subsequently, recorded the names of the respondent nos.8 and 9. It further transpires from the records of mutation proforma prepared by the KMC that, the following documents had been considered:-

    1. NOC, I.D. Proof.
    2. Form No. A-42.
    3. Affidavit of Undertaking
    4. Deed of Conveyance dated 28th November, 2024.

7. The KMC issued the mutation certificate in favour of the respondent nos.8 and 9 on 9th April, 2025, without considering the Will and the Certificate of Probate.

8. The appellant subsequently moved an application for revocation of grant which was registered as GA 4 of 2025 in connection with PLA 173 of 2023 before the jurisdictional Court. The said application filed by the appellant was taken up for consideration on 5th May, 2025 and by an order, a learned Single Judge of this Court, *inter alia*, passed the following order:-

> *"After considering the submissions of the parties and going through the nature of dispute, the assent, if not already made should remain stayed until further orders. The propounder as also the applicant herein is also restrained from dealing with, disposing of, alienating, encumbering or creating any third party interest or changing the nature and character of the assets and properties which have been bequeathed under the Will and Testament of Smt. Barsha Ganguli dated 5th February, 2020.*
>
> *Let affidavits be filed.*
>
> *Affidavit-in-opposition be filed by 10th June, 2025; reply thereto, if any, be filed by 27th June, 2025. Let this matter appear in the monthly list of July, 2025.*
>
> *The applicant is granted leave to correct the inadvertent typographical errors wherein the name 'Chitralekha' has been gone down as 'Ruplekha' at pages 33 and 53 of the petition."*

9. The appellant submits that the decision taken by the KMC to record the names of the respondent nos.8 and 9 suffers from procedural impropriety. KMC did not consider either the Will dated 5th February, 2020 or the Will dated 20th May, 2022. Only on the basis of the gift

deed dated 28th November, 2024 executed by Sri Sayan Bhattacharyya in favour of the respondent nos.8 and 9, the mutation was granted. Such decision on the part of the KMC was wholly erroneous. In view of the above, the appellant submits that the mutation certificate is liable to be set aside.

10. Mr. Suman Kr. Dutt, learned Senior Counsel appearing for the respondent nos.8 and 9 submits that there was no illegality in the order passed by the learned Single Judge. The learned Single Judge rightly held that until the probate was revoked, the mutation certificate granted by the KMC on the basis of the probate that was granted in favour of the respondent nos.8 and 9, should not be interfered with. The appellant did not have any right in respect of the estate of the deceased.

11. Mr. Biswajit Mukherjee, learned Counsel appearing for the KMC refers to a report dated 22nd November, 2025 submitted by the KMC before the learned Single Judge. The operative portion of the report is set out hereunder:-

> *"2) The previous recorded owner was Smt. Barsha Ganguli.*
>
> *3) It reveals from the mutation file vide case no.0/086/13-03-2025/165636 that mutation was granted in favour of the present Recorded Owners on the strength of the following documents submitted by the applicants:-*
>
> *I) No Outstanding Certificate (NOC) issued by Assessment Collection Department*
>
> *II) Duly filled up A-42 form.*

III) Copy of Regd. Deed of Gift being no 160319854 for the year 2024 dt 05/12/2024 at DSR-III South 24 Parganas executed between Sri Sayan Bhattacharya as Donor and Sri Kaushik Ganguli and Sulochana Kanjilal as Donees.

IV) It reveals from recital portion of above said deed that Mrs. Barsha Ganguli died testate on 30/10/2022 leaving her last will and testament dt.05/02/2020. Subsequently the said will was probated on 21/08/2024 by the Hon'ble High Court of Calcutta in favour of the executor of the said will Kaushik Ganguli vide P.L.A No 173 of 2023.

V) It reveals from the submitted regd deed that the donor Sri Sayan Bhattacharya and donees Sri Kaushik Ganguli and Sulochana Kanjilal became the joint owners each having undivided 1/3 share of the said unit. As such, Sri Kaushik Ganguli and Sulochana Kanjilal became the joint owners of the property on receipt of gift of the share of Sri Sayan Bhattacharjee."

12. Although we are aware of the position of law that neither grant of probate nor grant of mutation in municipal records creates title, but the question before us is whether the Corporation had acted and proceeded in accordance with law or not, while disposing of the mutation case and by entering the names of the respondent Nos. 8 and 9, in the municipal records.

13. It appears from the application submitted by the respondent nos.8 and 9, which is at page 307 of the stay application that the prayer for mutation was based on intestate succession and the probate in respect of the Will. However, in support of their case, the respondent

nos.8 and 9 submitted a copy of the gift deed dated 28th November, 2024, by which the respondent No. 10 transferred his one-third share in the property in favour of respondent nos.8 and 9. It appears from the records that there is an error apparent on the face of it, since the KMC could not have considered such application on the basis of the deed of gift alone, without considering the probate. The KMC proceeded on the basis of an incorrect application.

14. In view of the above, the mutation certificate issued in favour of the respondent nos.8 and 9 is quashed.

15. The respondent nos.8 and 9 are at liberty to take steps in accordance with law.

16. If such application is filed by the respondent nos.8 and 9, the same shall be processed by KMC, in accordance with law.

17. The order passed by the learned Single Judge is set aside as the said order does not take into account the procedural illegality that was committed by KMC.

18. Mr. Dutt's contention that until and unless the grant of probate was revoked at the instance of the appellant, the appellant did not have any right or interest in respect of the property in question, is not in doubt. However, the issue before us is not the rights of the parties, inter se, arising out of their respective Wills, but we are concerned with the decision of KMC, a statutory authority, of having acted on the basis of an incorrect application and insufficient documents.

19. Accordingly, the appeal and the connected application are disposed of.

20. However, there shall be no order as to costs.

21. Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)