ADSL.01 01.10.2026

NB Ct. 758 **CO 3022 of 2026**

Swapna Das

Vs.

Swarupa Biswas&Ors.

Mr. Kaushik Dey,

Mr. Debdipto Banerjee.

...for the petitioner.

Mr. Satyam Mukherjee,

Ms. Debomita Biswas,

Mr. Kingshuk Dasgupta.

....for the opposite party no.1.

The instant revisional application has been preferred against two orders dated 14th July, 2026 and 04th August, 2026 passed in OS No.17 of 2019 passed by the Additional District Judge, 1st Court at Barasat. By the initial order of 14th July, 2026, the learned Trial Court rejected an application for dismissal of the application for grant of Letters of Administration with the will annexed, and by the subsequent order dated 04th August, 2026, an application under Order VI Rule 17 CPC filed by the petitioner was rejected. The facts leading to the impugned orders are briefly stated, thus.

One Sanatan Biswas executed a will dated 24th January, 2001, which was registered on 25th January, 2001 appointing his son, Debasish Biswas, as an Executor thereunder. After the demise of Sanatan Biswas, Debashish Biswas filed an application for probate, registered as Miscellaneous Probate Case No. 345 of 2002, before the learned District Delegate, Barasat. However, before grant of probate, Debashish Biswas died and his wife filed an application for obtaining Letters of Administration with the will annexed. In the said proceeding, the petitioner herein filed a written objection/written statement. Accordingly, the proceeding became contentious. The same was thereafter re-numbered before the District Judge as O.S. No. 17 of 2019.

The petitioner herein is defendant no.6 in the said proceeding. On 14th January, 2026, the petitioner filed an application praying for rejection of the plaint in the said proceeding for Letters of Administration on the ground that the petitioner had recently discovered a will dated 27th June, 2014, allegedly executed by Debasish Biswas whereby, he had bequeathed his entire estate to the petitioner, being the sister of the deceased.

The petitioner contended that in view of discovery of the said will, the proceeding for grant of Letters of Administration was not maintainable and had to be dismissed.

The learned Trial Court considered and dismissed the said application on the premise that unless a probate was of the purported will dated 27th June, 2024 was granted it would

be premature for the petitioner to make such contentions before the Court. The Court, in any event, found that the said application was without any merit.

After the rejection of the said application for dismissal of the proceeding for grant of Letters of Administration, the petitioner filed an application for amendment of her written objection. The proposed amendment was to incorporate the discovery of the alleged will dated 27th June, 2014. The Trial Court proceeded to dismiss the said application as well, inter alia, on the grounds that the petitioner had discovered the will on 27th June, 2014, more than twelve years earlier, and that the petitioner had not exercised due diligence in seeking amendment.

Mr. Kaushik Dey, learned advocate appearing for the petitioner asserts that the finding of the Trial Court while rejecting the application for amendment is perverse because the date of the will was treated as the date of knowledge of the said will. He says that, in any event,while deciding an application for amendment of pleadings,the merits of the pleadings need not be gone into.

Mr. Satyam Mukherjee, learned advocate appearing for the opposite party no.1 vehemently opposes the said application and states that the same is utterly misconceived and has been filed just to delay the disposal of theapplication for grant of Letters of Administration, which is nearing its end. He submits that the application for dismissal of the proceeding is utterly misconceived inasmuch as, the existence of a will of a different individual could not have been a ground for dismissal

of the application for grant of Letters of Administration in respect of the will of Sanatan Biswas.

So far as the application for amendment of the pleadings is concerned, Mr. Kaushik Dey, learned advocate, referred to the stand taken by the petitioner in her written objection disputing the existence of Sanatan Biswas's will. He further submits that the amendment application would not expand the scope of the proceeding for Letters of Administration.

I have heard the submissions of the parties at length and considered the matter.

In the considered opinion of this Court, the application for dismissal of O.S. No. 17 of 2019 was misconceived. The pending proceeding relates to the will allegedly executed by Sanatan Biswas on 24th January, 2001. The document relied upon by the petitioner is an alleged will of Debashish Biswas dated 27th June, 2014. It is not a subsequent or competing will of Sanatan Biswas and cannot, merely by its existence, invalidate his Will or justify dismissal of the pending proceeding.

Even assuming the execution of Debashish Biswas's alleged will for the limited purpose of considering the dismissal application, any disposition made by him could operate only upon such estate or beneficial interest as lawfully belonged to him. Questions relating to the devolution of that interest are different from the validity of Sanatan Biswas's will. Further, the entitlement of the applicant to obtain Letters of Administration must be examined in accordance with law. It does not follow that the proceeding itself must be dismissed merely upon discovery of Debashish Biswas's alleged will.

In such view of the matter, this Court does not find any ground for interference with the order dated 14th July, 2026 dismissing the application for dismissal of the proceeding.

So far as the order rejecting the application for amendment of pleadings is concerned, as rightly pointed out by the learned advocate for the petitioner, on a meaningful reading of the application for amendment, it would appear that the date of knowledge as pleaded in paragraph 6 of the application is incorrectly recorded as January 2006 and was intended to refer to January 2026. The date of execution of the alleged will cannot, without supporting material, be equated with the date of its discovery. To that extent, the reasoning of the learned Trial Court cannot be sustained.

Even going by the averments made in the application for amendment, the petitioner has pleaded that the said will was discovered sometime in January 2026. However, this said application was filed after a lapse of over 6 months. This inordinate delay in filing the application for amendment is unexplained and crucial in view of the fact that the trial of the case had commenced.

Further, the amendment application must be considered separately, with reference to whether the proposed pleading is necessary for determining the real questions in controversy. The truth or validity of the alleged will is not to be adjudicated at this stage. However, the relevance of the proposed pleading to the pending proceeding is a matter which the Court is required to examine.

The proposed amendment intends to introduce the discovery of Debashish Biswas's alleged will and the petitioner's claim to his estate. The petitioner has not demonstrated how that assertion, by itself, has any bearing upon the validity of Sanatan Biswas's will. Adjudication of the petitioner's independent claim under Debashish Biswas's alleged will is not necessary merely because his estate may include a beneficial interest derived from Sanatan Biswas. In absence of such pleadings the proposed amendment is not shown to be necessary.

Accordingly, although the reasoning of the learned Trial Court relating to the date of knowledge is not affirmed its refusal to permit the proposed amendment does not, for the reasons stated above call for interference.

The learned Trial Court is directed to expedite the proceeding and dispose of the application for grant of Letters of Administration without granting any unnecessary adjournments to either of the parties.

Accordingly, this Court does not find any ground warranting interference with the order dated 04.08.2026.

In view of the aforesaid, C.O. 3022 of 2026 is dismissed.There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously upon compliance with the usual legal formalities.

(Anuj Singh, J.)