

13.05.2026
Ct. No.6
Sl. No.356
skg

C.O. 3683 of 2025

Smt. Chikan Bala Khila & Ors.
Vs.
Sri Pannalal Khila & Ors.

Mr. Gopal Chandra Ghosh, Sr. Adv.
Ms. Malyashi Maity,
Mr. Nisant Kumar,
Mr. Fardun Hossain,

...for the Petitioners

Mr. B.P. Mondal,
Mr. Sukanta Mondal,

...for the opposite parties

1. This revisional application is directed against an order dated August 13, 2025 as well as an order dated August 23, 2024 passed by the learned Additional District & Sessions Judge, 2nd Court, Tamluk, Purba Medinipur in Probate Case No. 2 of 2011.
2. By the order dated August 13, 2025 the petitioner nos. 1 to 3's application under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 praying for impleading them as parties to Probate Case no. 2 of 2011 and the petitioner no. 4's application for recall of the order dated August 23, 2024 whereby the said petitioner's application had been dismissed for default have been rejected by the learned Trial Court. By the order dated 23, 2024, the petitioner no. 4's application for addition of party to the said Probate

Case had been dismissed for default, which was sought to set restored by the application filed by the petitioner no. 4 as aforesaid.

3. The opposite party no.1 has initiated the aforesaid Probate Case no.2 of 2011 before the learned Additional District Judge, 2nd Court, Tamluk praying for probate of a Will executed by one Hrishikesh Khila, since deceased. It is not disputed that said Hrishikesh Khila had passed away unmarried and the petitioners are the second class heirs of the testator. In such view of the matter the estate of the deceased testator would devolve upon the petitioners being the second class heirs, in usual course of intestate succession.
4. Contending as aforesaid, the petitioners approached the learned trial Court by filing the aforesaid applications under Order 1 Rule 10(2) of the Code of Civil Procedure seeking their impleadment. The said application has been turned down by the order impugned. Hence the revisional application.
5. Mr. Ghosh, learned Senior Advocate appearing for the petitioners submits that the petitioners being the second class heirs of the deceased testator have caveatable interest in the estate of the deceased testator and as such they are entitled to be issued citation as well as to be impleaded as parties to the

probate case. It is submitted that the learned Trial Court ought not to have rejected the petitioners' application without appreciating the petitioners' case.

6. Mr. Mondal, learned Advocate appearing for the opposite parties submits that the petitioners' application was a part of delaying tactics adopted by the petitioners and an earlier application filed by the petitioner no. 4 of them had also ended in dismissal.
7. Mr. Ghosh, learned Senior advocate submits in reply that the earlier dismissal of the application by the petitioner no. 4 was not on merits and the said application filed earlier had been dismissed for default.
8. Having heard the learned Advocates appearing for the respective parties and considered the materials on record, this Court is of the view that the learned trial Court was not justified in dismissing the petitioners' application for impleadment under Order 1 Rule 10(2) of the Code. Since it was neither disputed before the Trial Court and nor has been disputed before this Court that the petitioners are second class heirs of the deceased testator. In such view of the matter the estate of the testator would have devolved upon the petitioners, in absence of a Will.

The petitioners, therefore, have caveatable interest in the estate of the testator.

9. In such view of the matter, the application for addition of parties filed by the petitioners deserved to have been allowed.
10. For all the reasons aforesaid the order impugned dated August 13, 2025 as well as the order dated August 23, 2024 are set aside. The applications filed by the petitioners i.e. petitioner nos. 1 to 3 together and the petitioner no.4 separately both praying for addition of parties to the probate case are allowed. The petitioners shall be added as parties to the probate case.
11. The learned trial Court is requested to endeavour to proceed with the said probate case being Probate Case no.2 of 2011 as expeditiously as possible and dispose of the same without granting any unnecessary adjournment to either of the parties.
12. C.O. 3683 of 2025 stand disposed of. There shall be no order as to costs.
13. 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.)

