

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FAT 339 of 2022

Sajan Mondal and another
Vs.
Ingrid Mondal and others

For the appellants : Mr. Sounak Bhattacharya,
Mr. Sounak Mondal

Heard on : 02.07.2026

Judgment on : 02.07.2026

Sabyasachi Bhattacharyya, J.:-

1. None appears for the respondents at the time of call, although the appellants are represented by counsel.
2. The present appeal has been preferred against the dismissal of a probate application by the learned District Delegate.
3. Learned counsel for the appellants contends that the dismissal was only on the ground that sufficient details and particulars of the testator's properties have not been given in the Will and that no document, whether any deed or records of rights, have been filed to substantiate that the A schedule properties belonged to the testator.

4. It is contended that under Section 288 of the Indian Succession Act, 1925 (for short, “the 1925 Act”), the District Delegate does not have the power to dismiss a probate application. In the event the District Delegate is of the opinion that the probate application ought to be refused, the same has to be referred to the learned District Judge.
5. Secondly, learned counsel places reliance on the Will itself, which is a registered document, from which it transpires that the entire properties of the testator within India, moveable and immoveable, were bequeathed by the same.
6. It is not necessary by any legal provision that full particulars of the subject property of a Will have to be enumerated in the Will itself. It would suffice if the testator’s intention to bequeath his/her properties is explicitly expressed in the Will, by giving an idea as to what part of such properties are to be demised.
7. Thus, it is argued that the learned District Delegate erred in law in dismissing the probate application.
8. We find substance in the contentions of the appellants.
9. First, in terms of Section 288 of the 1925 Act, in every case in which there is contention, *or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court*, the petition, with any documents which may have been filed therewith, shall be returned to the person by whom the application was made in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purpose of justice, to impound the same.

10. In the present case, thus, the learned District Delegate did not have the authority in law to dismiss the probate application altogether. At best, if the learned District Delegate was of the opinion that the probate application was to be dismissed, the sole course of action open to her was to return the application to the propounders in order to be presented before the learned District Judge.
11. Secondly, the very premise of the impugned judgment is erroneous in law inasmuch as in the subject Will, the testator amply and explicitly provided that his entire properties – moveable and immoveable – situated in India were being bequeathed by virtue of the Will.
12. Coupled with such fact, in the affidavit of assets filed along with the probate application, the propounders fully described the property which was the subject-matter of the Will, which ought to have sufficed for grant of probate.
13. The third ground on which the learned District Delegate erred in law was by insisting upon production of documents to show the title of the testator in the subject property. It is trite law that in an application for probate, the testamentary court cannot go into the question of title, which comes exclusively within the domain of a regular civil court taking up a civil suit.
14. Last but not the least, the learned District Delegate overlooked the presumption of correctness otherwise attached to a registered Will.
15. As such, none of the grounds on which the probate was refused by the learned District Delegate are valid in the eye of law.

16. If the execution of the Will was otherwise proved duly in accordance with the relevant provisions of the Indian Succession Act and the Evidence Act, there could not be any justification to refuse the grant of probate in respect of the same.
17. Hence, the impugned judgment suffers from the above legal errors and ought to be set aside.
18. Accordingly, FAT 339 of 2022 is allowed, thereby setting aside the impugned judgment and *ex parte* deemed decree dated September 30, 2022 passed by the learned District Delegate at Baruipur, District: South 24 Parganas in Probate Case No. 05 of 2021 and remanding the matter to the said learned District Delegate for a fresh consideration, on the evidence already on record, as to whether, in the light of the above observations, probate ought to be granted in respect of the same. If so, the learned District Delegate will grant such probate.
19. However, in the event the learned District Delegate is still of the opinion that the probate ought to be refused on some other cogent ground than those on which it was refused at the first instance, the learned District Delegate shall return the probate application to the propounders for the purpose of presentation before the learned District Judge. In such event, the propounders/appellants shall present the said probate application before the concerned District Judge for the purpose of the probate application being taken up for disposal by the learned District Judge and/or any learned Additional District Judge to whom it may be assigned for such purpose by the District Judge.

20. We are confident that the concerned learned District Delegate shall complete the above exercise within three weeks from the date of communication of this judgment to the learned District Delegate.
21. Interim order, if any, stands vacated.
22. The trial court records, along with the original Will, shall be remitted back to the learned District Delegate by special messenger at the cost of the appellants, to be deposited within a week from date.
23. There will be no order as to costs.
24. Interim orders, if any, stand vacated.
25. Urgent photostat certified copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)