

IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY AND INTESTATE JURISDICTION
ORIGINAL SIDE

TS/11/2010

IN THE GOODS OF:
DEBA RANI GUPTA (DEC)
AND
JOY SUNDAR GUPTA
-VS-
SUDARSHAN GUPTA

BEFORE:

The Hon'ble JUSTICE ANANYA BANDYOPADHYAY

Date: 18th February, 2026.

Appearance:
Mr. A. Basu, Adv.
Ms. Punam Basu, Adv.
Mr. A. Chakraborty, Adv.
Mr. A. Sengupta, Adv.
...For the Plaintiff

The Court:- On 13th February, 1979 Smt. Debrani Gupta, the deceased, made and published her last Will and Testament, whereby she appointed the plaintiff herein as the sole executor of her said last Will and Testament. On 4th March, 2001, Smt. Debrani Gupta, expired.

In September, 2006, the plaintiff applied for grant of probate to the last Will and Testament of the deceased testatrix in the Hon'ble High Court at Calcutta which was registered as PLA No. 282 of 2006. On 25th April, 2007 general citation was issued on behalf of the plaintiff herein.

By an order dated 10th July, 2007 the Hon'ble Court granted probate to the last Will and testament dated 13th February, 1979 of the deceased testatrix in favour of the plaintiff as aforesaid.

In June, 2009 one Sudarshan Gupta, since deceased, filed an application being G.A. No. 1604 of 2009 for revocation of probate granted by this Hon'ble Court in favour of the plaintiff.

By an order dated 18th November, 2009, the Co-ordinate Bench of this Court recalled the earlier order dated 10th July, 2007 and revoked the probate granted in favour of the plaintiff and directed PLA NO. 282 of 2006 to be contentious cause. The same was thereafter renumbered as T.S. No. 11 of 2010. The original Probate had been retained in the custody of the Learned Registrar, Original Side.

On 19th April, 2013 the original defendant died, and a substitution application being GA NO. 304 of 2013 was filed for substitution of the legal heirs instead and in place of the original defendant. By an order dated 19th April, 2013 as passed by the Co-ordinate Bench of this Court, the same was allowed.

On 12th June, 2017 by an Order as passed by the Co-ordinate Bench of this Court, the application being G.A. No. 1830 of 2017 for amendment or correction of the name of the deceased testatrix, which was inadvertently mentioned as 'Smt. Deba Rani Gupta' in the probate application instead of 'Smt. Debrani Gupta' as appeared in her Will, was allowed and the plaintiff was directed to file an amended copy of the petition.

In 2019 in terms of the Order of this Hon'ble Court, special citations were issued upon substituted defendants herein. It appeared from the report of the Sheriff with regard to the issue of citations upon the substituted defendants that due to typographical error the name of one of the substituted defendants had been recorded as Surojit Gupta in the cause

title of the amended plaint of the instant suit. However, the legal heir of the deceased defendant namely Sudarshan Gupta has been Subhojit Gupta.

In 2019 an application being GA No. 2194 of 2019 was filed by the plaintiff herein for necessary correction and substitution of the heir and legal representative of the deceased defendant Sudarshan Gupta, since deceased, which was inadvertently mentioned as 'Surojit Gupta' instead of 'Subhojit Gupta'. The same was allowed by Order dated 11th November, 2019 and corrected Orders on 6th December, 2019 and 3rd January, 2020, and an amended plaint was filed by the plaintiff. In 2020 necessary citation was issued upon the substituted defendants herein, after payment of special messenger cost by the plaintiff.

On 5th September, 2023 the Court directed a report to be filed by the Department in view of the submission made on behalf of the plaintiff that necessary citation was issued upon the substituted defendants herein after payment of special messenger cost.

On 13.09.2023 it appeared from the report dated 12th September, 2023 received from Testamentary Department that though service of citation was effected upon the defendant, namely Pranati Gupta, service upon the respondent namely, Subhojit Gupta, could not be effected. Thus, the plaintiff was directed to take steps for paper publication of the notice in respect of the respondent Subhojit Gupta. The publication was made in the daily Bengali newspaper 'Anandabazar Patrika'.

On 30th April, 2024 time for issuance of citation was further extended. On 24th June, 2024 an affidavit of compliance in respect of paper

publication of the notice in respect of the respondent Subhojit Gupta was affirmed and filed before the Testamentary Department.

The Plaintiff, as such prayed since issuance of citation had already been complied with, necessary directions for reissuance of the Original Probate in favour of the Plaintiff be passed, which had been presently retained in the custody of the Learned Registrar in terms of the Order dated 18.11.2009.

On 18th November, 2009 a Co-ordinate Bench of this Hon'ble Court passed the following order :-

"This is an application for revocation of the grant of a probate.

The applicant complains that inasmuch as the husband of the deceased had pre-deceased her, the estate of the husband reverted to the sons of the nephew being the agnates. The grievance is that no notice or citation prior to the grant was issued to the applicant.

The propounder is represented and concedes to the prayer. It is submitted that a bona fide mistake was committed in the possible claim of the applicant having been overlooked.

In view of the stand taken by the propounder, the order dated July 10, 2007 is recalled and the grant is revoked.

The propounder says that the probate has been made out on valuable stamp paper and submits that the probate in its final form should be retained with the Registrar, Original Side in a sealed cover with the endorsement that the probate stands revoked. The propounder says upon the proceedings being conducted afresh with notice to the applicant herein, if the probate is granted the stamp paper would not be wasted.

Joy Sundar Gupta, who obtained the grant, will return the original probate to the Registrar, Original Side within a fortnight from date whereupon the Registrar will retain the same in a sealed cover subject to any further order that may be passed.

GA no. 1604 of 2009 is disposed of without any order as to costs.

PLA no. 282 of 2006 now revives and the present application will be treated as an affidavit in support of the caveat of the applicant. PLA no. 282 of 2006 is set down as contentious cause.”

Since the procedural technicalities had been complied with in respect of citations being issued and published, rectification of names through amendment to have been accomplished, further paper publication being conducted, the applicant did neither respond nor appeared before this Court or had been appropriately represented through a Learned Advocate.

Under such circumstances, the grant of probate being unchallenged, the order recalling grant of probate cannot be kept in abeyance till unspecified time period. Therefore, the earlier order cancelling revocation of grant of probate is recalled. The probate granted in favour of the petitioner is restored.

The Registrar, Original Side is to reissue the Original Probate granted in favour of the plaintiff which had been retained in his custody.

Accordingly, T.S. 11 of 2010 is disposed of.

(ANANYA BANDYOPADHYAY, J.)