

(2016) 03 CAL CK 0076
In the Calcutta High Court
Case No : C.O. 147 of 2016

Partha Pratim Mitra

APPELLANT

Vs

Smt. Suvra Som & Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2016) 2 ICC 600

Hon'ble Judges : Soumen Sen, J.

Bench : Single Bench

Advocate : Soumabho Ghose, Priyabrata Patra and Ratul Das, Advocates, for the Appellant; Sabyasachi Bhattacharya, Sr. Advocate and Sounak Bhattacharya, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Soumen Sen, J. :- This revisional application is directed against an order dated 26th November 2011 passed in connection with an application filed by the applicant/petitioner, namely, Partha Pratim Mitra for addition of party under Order 1, Rule 10 of the Code of Civil Procedure to Smt. Suvra Som.

2. Partha Pratim Mitra appears to have filed a probate proceeding on the basis of a will appears to have been registered on 17th May 2005. Subsequently, Smt. Suvra Som filed a proceeding for obtaining probate of a will alleged to have been executed by Amal Chandra Som on 6th May 2006.

3. In the probate proceeding initiated by Partha Pratim Mitra, Suvra Som was added as a party and she is contesting the said proceeding. The petitioner being aware of a rival will on the basis of which Suvra Som prayed for probate in her favour, filed an application in the said probate proceeding. The said application for addition of party was rejected by the Trial Court.

4. A judgment in a probate proceeding is a judgment in rem. It is only desirable that when two rival wills are placed before the Court may be in two different

proceedings, the Court may consolidate the proceeding and hear both the matters so that no complication arise in future.

5. Mr. Sabyasachi Bhattacharya, learned advocate appearing in favour of the opposite party submits that the petitioner has to establish that she has a caveatable interest in the proceeding initiated by Suvra Som inasmuch as the mother of the petitioner was made a party in the said proceeding and she had already filed her objection against the grant.

6. On perusal of the said petition, it appears that the mother of the petitioner had referred to an earlier will and set up the said document as a defence to the claim made by Suvra Som.

7. Both the counsels have referred to a judgment of the Hon''ble Supreme Court in Krishna Kumar Birla v. Rajendra Singh Lodha and Others reported in (2008) 4 SCC 300 in support of their submissions.

8. It appears from paragraph 86 (ii) that one of tests to be applied is: Does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right.

9. In any event, it is the duty of the Court that the Court is required to grant probate only in respect of will which is genuine.

10. Under such circumstances, the addition of party filed by the petitioner is allowed.

11. The Additional District Judge, 13th Court, Alipore is directed to hear both the probate proceedings analogously and dispose of the said proceeding as expeditiously as possibly and preferably within a period of six months from the date of commencement of trial.

12. The petitioner shall file written objection in Original Suit No. 91/2013 within a period of two weeks from date. The trial Court may take up the said Original Suit being OS 91/2013 since it is at the peremptory board.

13. With these observations, the revisional application stands disposed of. There shall be no order as to costs.