

(2025) 11 JH CK 1927

In the Jharkhand High Court

Case No : Civil Miscellaneous Petition No. 598 Of 2025

Shashi Kant Pandey

APPELLANT

Vs

Ajit Gour, son of Late Bishtu Gour

RESPONDENT

Date of Decision : 10-11-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 6 Rule 17
Indian Succession Act, 1925 — Section 213, 222, 276(1)(d)
Court Fees Act, 1870 — Section 19(I)

Citation : (2025) 11 JH CK 1927

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Sudhir Kumar Sharma, Sanjay Kumar Sinha, Monalisha Singh

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Petitioner is before this Court against the order dated 04.03.2025 passed by learned Principal District Judge, East Singhbhum at Jamshedpur in Probate Case No.27 of 2023 whereby and whereunder petition for amendment of the probate application filed under Order VI Rule 17 read with Section 151 of the CPC, has been rejected.

2. Petitioner is the executor with respect to property as detailed in the Schedule of the WILL. After death of the testator, probate application was filed for grant of probate.

3. Petitioner filed the petition on 17.12.2024 for amendment so as to confine his claim to 1/7th share i.e. 01 acre 60 decimals of the land described in the WILL which has been rejected and the instant civil miscellaneous petition has been preferred against the said order of rejection.

4. It is submitted by the learned counsel on behalf of petitioner that the total area of the land is 11 acre 20 decimals and valuation of the property is

Rs.01,41,77,644/- and the duty money claimed has been raised to Rs.14,17,764/-. It is argued by the learned counsel that he is not in a financial position to pay the duty money and therefore, filed the amendment petition to confine his share 1/7th to which he is legally entitled as per inheritance.

5. It is argued that predicament of this petitioner is that even if he somehow pays the entire Court fees, there cannot be any certainty of grant of probate and in that circumstance, entire duty money will be of no use. In this view of matter, High Court of Punjab and Haryana, vide order dated 18th May, 1956 in the case of Mrs. Susheela Dantiyagi Vs. The State & Others passed in Probate Case No.3-D of 1955 reported in Indian Law Reports Vol. IX, page 1356 held that question of duty money to be paid, can arise only at the time when the certificate is granted and not at the threshold when the probate application is filed. A specific reference is made under Section 276(1)(d) of the Indian Succession Act, 1925 which only requires the party to mention the amount of assets which are likely to come at the petitioner's hand. Similar provision is with regard to Letter of Administration as under Section 276(1)(d) of the Indian Succession Act, 1925. It is further argued that mandate of Section 19-(I) of the Court Fees Act is with respect to requirement of payment of Court fees before such an order for grant of probate or Letter of Administration is made. It is also argued that in terms of Government notification dated 23.11.2023 vide LG-11/2021-22, Para A of Schedule- I has been amended and by the amending Act, probate of a WILL or Letter of Administration with or without annexing duty money, 10% of the amount of value is to be paid.

6. Learned counsel on behalf of the opposite parties does not raise any objection to the amendment petition. It is submitted that since the petitioner has claimed only 1/7th share in the Schedule property therefore, no objection is raised on behalf of the opposite parties.

7. Issue raised at Bar in the present case can be summed up as under: - Can an application for probate of WILL be filed with respect to only part of the property bequeathed by WILL?

8. Answer to it is plain that ordinarily an application for probate of a WILL cannot be filed for only part of the property bequeathed by that WILL. Probate must be sought for the entire WILL, not for a portion of it. Under Sections 213 and 222 of the Indian Succession Act, 1925, Probate is the official proof of the entire WILL. When a probate is granted, it establishes the validity of the WILL itself, not just the title to individual properties. Therefore, a probate must necessarily relate to the whole testamentary instrument, since partial probate would mean judicial recognition of part of a WILL and denial of the rest which is not ordinarily allowed.

9. So far duty fees is concerned, Section 19-I of the Court-fees Act, 1870, Court fee on Probate or Letters of Administration is payable on the value of the property in respect of which the grant is made, not necessarily the entire estate of the deceased. Valuation of Court fee for purposes may be restricted to the

property covered by the application, even though the probate itself must refer to the whole WILL.

10. Under the aforesaid facts and circumstance, this Court is of the view that although bequest is for the whole property, applicant can confine his claim to only part thereof. In that event, Court fees will be for the share of the property over which he claims the bequest. Once the applicant confines his claim to a portion, he/she shall be estopped from making claim over more than the share he has claimed and has paid the proportionate share of the Court fees.

11. In the present case, since the applicant seeks to confine his claim to 1/7th part of the property bequeathed, the amendment of probate application is allowed subject to the condition that grant of probate shall not take effect for more than 1/7th share of the property.

Civil Miscellaneous Petition is accordingly allowed. Pending Interlocutory Application, if any, is disposed of.