
(2002) 10 CAL CK 0016
In the Calcutta High Court
Case No : Civil Order No. 983 of 2002

Smt. Sushmita Dey and Others	Vs	APPELLANT
Smt. Sovana Dey		RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : AIR 2003 Cal 38 : (2003) 94 RD 642

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Gopal Chandra Mukherjee II, for the Appellant; Bidyut Kumar Banerjee, Shila Sarkar and Arnab Kumar Ray, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an application u/s 24 of the CPC for transfer of O. S. No. 28 of 2001 pending before the learned Additional District Judge, Fourth Court at Barasat, District : 24 Parganas (North) and for analogous trial with O. S. No. 154 of 2001 pending before the learned District Judge at Alipore. District : 24 Parganas (South).

2. This application concerns the estate of one Dilip Kumar Dey. who was a Deputy Superintendent of Police under the West Bengal Police Directorate. The said Dilip Kumar Dey expired on August 20, 2000 at Kothari Medical Centre, Kolkata. The opposite party in this application, Shrimati Sovana Dey, claiming to be the first wife of the said Dilip Kumar Dey, filed an application for grant of succession certificate being Act 39 Case No. 31 of 2001. Since the petitioners in this revisional application have entered appearance in the said Act 39 Case No. 31 of 2001 and are contesting the claim of the opposite party, the said proceeding for grant of succession certificate became contentious. Subsequently, the said proceeding has been registered as O. S. No. 28 of 2001 and presently the same is pending in the Court of the learned Additional District Judge, Fourth Court at Barasat, District : 24 Parganas (North).

3. The petitioners in this application filed an application for grant of letters of

administration in respect of the alleged last will and testament allegedly executed by the said Dilip Kumar Dey. In the said application it was contended that the petitioner No. 1 is the wife of the said Dilip Kumar Dey while the petitioner Nos. 2 and 3 are the minor sons of the said Dilip Kumar Dey through the petitioner No. 1. The said proceeding was registered as Act 39 Case No. 92 of 2000. However, as the opposite party has entered appearance in the said proceeding and contested the claim of the petitioners, the application was returned and the same was re-filed in the Court of the learned District Judge at Alipore, District; 24 Paraganas (South) and has been registered as O. S. No. 154 of 2001 in the said Court.

4. Now, the petitioners have come up with this application for transfer of Barasat proceeding to Alipore and for analogous trial of the aforesaid proceedings. It is contended that the petitioner No. 1 is a widow and the petitioner Nos. 2 and 3 are minors and it has become difficult for the petitioners to contest the proceeding at Barasat due to inconvenience to undertake journey to Barasat from Kolkata and for financial difficulties. Moreover, it is stated that in order to avoid conflicting judicial opinions, it is necessary to decide both the matters analogously.

5. In opposing this application Mr. Bidyut Kumar Banerjee, learned senior advocate, appearing for the opposite party, contended that this application u/s 24 of the CPC for transfer of the proceeding for succession certificate is not maintainable as the CPC has limited application in respect of a proceeding for grant of succession certificate. Mr. Banerjee in order to substantiate his argument referred to the provisions of Section 268, 372 and 373 of the Indian Succession Act, 1925 and submitted that while in Section 268 of the said Act it has been clearly stated that the proceeding in relation to the granting of probate and letters of administration shall, save as otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908, u/s 372 and 373 of the said Act the CPC has very limited application in relation to proceeding for grant of succession certificate. Accordingly, it is submitted by Mr. Banerjee, that there is no application of Section 24 of the CPC in relation to a proceeding for grant of succession certificate.

6. In the case of Ramji Sao and Others Vs. Jageshwari and Another, it has been held that provisions of the CPC relating to the procedure in suits would apply also to a proceeding for grant of a succession certificate under the Indian Succession Act, 1925 because it is a proceeding in a court of civil jurisdiction. Section 384(3) of the said Act provided that the provisions relating to reference and revision by the High Court as well as to review of judgment as enumerated in the CPC would apply to a proceeding for grant of a succession certificate before the learned District Judge and that they would apply because of the provisions of Section 141 of the Code of Civil Procedure.

7. My reading of the various provisions of the Indian Succession Act, 1925 is that a proceeding for the grant of a probate or of a succession certificate has to be

treated and equated to a proceeding in a suit and the procedures governing those proceedings are as laid down in the Code of Civil Procedure. A combined reading of the provisions of the Indian Succession Act, 1925 clearly suggests that the proceedings for the grant of succession certificate before the learned District Judge are in the form of regular suits and they are to be conducted according to the Code of Civil Procedure. In any view of the matter, as the proceeding for grant of succession certificate is pending before a civil court subordinate to High Court, the application u/s 24 of the CPC will certainly be maintainable for transfer of a proceedings for grant of succession certificate under the Indian Succession Act, 1925.

8. On merits, also, I am satisfied that the proceeding for grant of succession certificate is required to be transferred from Barasat to Alipore. Firstly, the petitioner Nos. 2 and 3 are minors and the petitioners are residing near to the premises of Alipore Court and as such it will be difficult for them to attend Barasat Court. Secondly, no prejudice will be caused to the opposite party in the event the Barasat proceeding is transferred to Alipore and tried analogously with the Alipore proceeding for the grant of probate as she was already contesting the Alipore proceeding. Lastly, in order to avoid conflicting judicial opinions, it is desirable that both the proceedings should be tried by one Court.

9. Accordingly, the application u/s 24 of the CPC is allowed. O. S. No. 28 of 2001 pending before the Court of learned Additional District Judge. Fourth Court at Barasat is withdrawn from the said Court and is transferred to the Court of the learned District Judge at Alipore, District : 24 Parganas (South) to be tried analogously with O. S. No. 154 of 2001. However, it will be open to the learned District Judge at Alipore, District 24 Parganas (South) to transfer both the said suits to the Court of any of the learned Additional District Judges functioning at Alipore.

10. There will be no order as to costs.

11. Office is directed to transmit copies of this order to the Court of the learned District Judge at Alipore. District : 24 Parganas (South) and to the Court of the learned Additional District Judge, Fourth Court at Barasat, District 24 Paraganas (North) by the special messengers at the cost of the petitioners to be deposited before the commencement of the long vacation.