Appellant Vs. Respondent

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Court : Kolkata

Decided On : May-04-2016

Judge : Debangsu Basak

Appellant : Appellant

Respondent : Respondent

Judgement :

IN THE HIGH COURT AT CALCUTTA Testamentary and Intestate Jurisdiction Original Side G.A.No.949 of 2013 PLA No.255 of 2011 In the Goods of : Purushottam Dass Bangur For the Petitioner : Mr.S.K.

Kapoor, Sr.Advocate Mr.P.K Jhunjhunwala, Advocate Mr.Ravi Kapoor, Advocate For the Respondent : Mr.Mr.Mr.Mr.Hearing concluded on : April 20, 2016 Judgment on : May 4, 2016 S.P.Sarkar, Sr.Advocate Debajyoti Datta, Advocate Adil Rashid, Advocate Amiya Narayan Mukherjee, Advocate DEBANGSU BASAK, J.

The propounders seeking grant of probate of the Will of Purushottam Dass Bangur, since deceased has applied for the caveat of the son of the deceased given in adoption, namely, Lakshmi Niwas Bangur (hereinafter referred to as the caveator) to be discharged and probate of the Will of the deceased to be granted.

Mr.S.K.Kapoor, learned Senior Advocate for the petitioners has submitted that, consequent to the caveator being given in adoption, he had ceased to have any

right in the natural family in view of the provisions of Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956.

In support of the proposition that, with the adoption, the adoptee cannot have any vested right in the undivided Hindu family of his natural birth Mr.Kapoor has relied upon All India Reporter 1987 Supreme Court page 398 (Vasant & Anr.v.Dattu & Ors.).All India Reporter 1992 Bombay page 189 (Devgonda Raygonda Patil v.

Shamgonda Raygonda Patil & Anr.) and All India Reporter Patna page 125 (Santosh Kumar Jalan v.

Chandra Kishore Jalan & Anr.).He has submitted that, the view taken by the Andhra Pradesh High Court reported at All India Reporter 1981 Andhra Pradesh page 19 (Yarlagadda Nayudamma v.

The Government of Andhra Pradesh & Ors.) is not correct.

Such view has been dissented from by the High Courts of Patna and Bombay.

Mr.Kapoor has emphasized the difference between a joint Hindu family continuing in jointness with the properties available to the family and a joint Hindu family governed by the Mitakshara law having such properties partitioned amongst themselves.

In this regard he has relied upon 1988 Volume 2 Supreme Court Cases page 126 (Dharma Shamrao Agalawe v.

Pandurang Miragu Agalawe & Ors.) and All India Reporter 1935 Calcutta page 131 (Dhanabati Bibi v.

Protapmull Agarwalla & Ors.).Mr.S.P.Sarkar, learned Senior Advocate appearing for the caveator has submitted that, the caveator is a natural son of the testator.

The petition for grant of probate has shown the caveator as a natural heir.

By an Order dated January 5, 2012 a special citation was directed to be issued to the caveator as the caveator was not cited initially.

Although the caveator was given in adoption in 1970 yet the caveator has the locus standi to question grant of probate of a Will of the testator.

In the affidavit in support of the caveat the caveator has disclosed various grounds on which the probate ought not to be granted.

A probate Court being a Court of conscience such Court had allowed third parties to apply for revocation of probate already granted.

In support of such proposition he has relied upon All India Reporter 2005 Calcutta page 343 (Smt.

Chunibala Barui & Ors.v.Lakshmimani Adbikary & Ors.).Since the caveator has come at a stage prior to the grant of probate, it would be proper for the probate Court to allow the caveator to contest the grant of the Will.

He has referred to various provisions of the Will which according to him could not have been part of a Will if the Will was genuine.

Mr.Sarkar has referred to Section 30 of the Hindu Succession Act, 1956.

He has submitted that, Section 30 allows any Hindu to dispose of by Will or other testamentary instrument any property which is capable of being disposed of by him in accordance with the provisions of Hindu Succession Act, 1956 or any other law for the time being in force and applicable to a Hindu.

He has submitted referring to the explanation of Section 30 that the interest of a Hindu in Mitakshara coparcenary property is deemed to be property capable of being disposed of by him within the meaning of Section 30.

He has referred to provisions of the Will which speaks of a business being carried out in the name of the Hindu Undivided Family.

According to him, the caveator had succeeded to the interest of the testator in respect of such business.

Mr.Sarkar has relied upon the definition of vested interest under Section 19 of the Transfer of Property Act, 1882.

He has submitted that, the caveator has vested interest in the testators interest in the business of the joint Hindu family.

Therefore, in case of intestate succession the caveator would have succeeded to such interest of the testator.

Consequently, the caveator has sufficient interest in the estate of the deceased so as to contest the Will.

Referring to 2013 Volume 2 Calcutta High Court Notes page 325 (Jadabendra Narayan Choudhury v.

Shitanshu Kumar Choudhury @ Subhendra Choudhury) Mr.Sarkar has submitted that, the views of the Bombay and Patna High Courts with regard to the interpretation of Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956 have not been followed by this Court.

He has also relied upon the various passages extracted from Mullas Hindu Law and Maynes Hindu Law set out in Jadabendra Narayan Choudhury (supra).He has pointed out that, such authors are of the opinion that the views expressed by the Bombay and the Patna High Courts on Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956 are not correct.

Should the caveat lodged by a son in a Mitakshara family given in adoption be discharged in a proceedings for the grant of probate of the Will of the natural father of such son in view of the provisions of Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956 is the issue which has fallen for consideration.

The petitioners have applied for grant of probate of the Will dated September 4, 2008 of the testator.

In the application for grant of probate the caveator has been shown as the younger son who would have been entitled to inherit the estate of the testator in case of intestacy.

In paragraph 11 of such application the petitioners have alleged that, the caveator claims to be the adopted son of Gokul Chand Bangur and no deed of adoption was ever executed or registered.

In such circumstances, the petitioner has asked for a citation to be issued upon the caveator.

Initially citation was not issued to the caveator.

By an Order dated January 5, 2012 special citation was issued to the caveator.

The caveator had filed its affidavit in support of the caveat pursuant to the Order dated August 23, 2012.

The petitioner has through the present application applied for discharge of the caveat and has sought grant of probate of the Will.

The heirs of the testator on intestacy are governed by the Mitakshara School of Hindu law.

In an undivided Mitakshara family without a partition being effected no individual member of such family can claim to have a definite share in such family.

On partition the shares are defined.

A coparcener on partition may take the property by metes and bounds or continue to live with the other coparceners and enjoy the property in common as before.

Once a coparcener has expressed an intention for partition, and a partition happens, the shares get defined and the jointness of the property ceases.

This view has been expressed in Dhanabati Bibi (supra).The provisions of Section 12(c) of the Hindu Adoptions and Maintenance Act, 1956 has been considered in Vasant & Anr.

(supra).It has been held in paragraph 4 as follows:- 4.

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The introduction of a member into a joint family, by birth or adoption, may have the effect of decreasing the share of the rest of the members of the joint family, but it certainly does not involve any question of divesting any person of any estate vested in him.

The joint family continues to hold the estate, but, with more members than before.

There is no fresh vesting or divesting of the estate in anyone. The facts of the present case do not attract Section 12(c) of the Hindu Adoptions and Maintenance Act, 1956.

The provisions of Section 12 of the Hindu Adoptions and Maintenance Act, 1956 came up for consideration in Dharma Shamrao Agalawe (supra).The observations made in Vasant & Anr.

(supra) was noted.

It has been held that the joint family property does not cease to be a joint family property when it passes to a hands of sole surviving coparcener.

Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956 is as follows:12(b).any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth. In Yarlagadda Nayudamma (supra) the Andhra Pradesh High Court construing Section 12(b) of the Hindu Adoptions Maintenance Act, 1956 has expressed the following view:3.

From the provisions of the aforesaid Statute it is quite manifest that the Legislature has enacted a special provision i.e., proviso (b) to Section 12 of the Act which is explicit and unequivocal in its language and intention.

The property as per the said proviso (b) which vested in the adopted child before the adoption shall continue to vest in such person.

It is further added that property will be subject to the obligations, if any, attached to the ownership of such property.

Therefore it is the undoubted view of the Legislature that a person even after being given in adoption, takes along with him the property from his natural family which vested in him and continues to vest in him, adoption notwithstanding, whether that property vested in him either due to partition or otherwise.

The texts of the Mitakshara Law, which we will presently see, are emphatic with regard to the vesting of the property in the coparcener.

The property vests in a coparcener by birth and hence he gets a vested right in that property by virtue of inheritance.

The position would have been probably different, if the proviso (b) was not enacted in Section 12.

Be that as it may, in so far as the proviso (b) is concerned, it makes perfectly clear that the person even after his adoption, takes that property along with him which was earlier vested in that person.

.. 4.

This apart, the coparcener has got every right under Section 30 of the Hindu Succession Act to will away his property or to dispose of or alienate in whichever way he desired, which he is entitled by birth.

It may be, that at a time when he alienated or willed away, there may not have been a definite demarcation of the sons; but certainly he would be entitled to a particular share along with other and coparceners which could be given effect to by various modes of disposition.

That presupposes that he had got an independent right by birth which might be dormant in certain cases and patent in other cases.

From the foregoing what becomes apparent is that notwithstanding the adoption, a person in Mitakshara family has got a vested right even in the undivided property of his natural family which on adoption he continues to have a right over it.

This, in our judgment, is the undivided interpretation which has to be placed upon the provisions enacted in the proviso (b) to Section 12 of the Act; and to construe otherwise, would be causing violence to the explicit expression given in the language of the said proviso.

.... The Bombay High Court in Devgonda Raygonda Patil (supra) has construed Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956.

It has differed from the view expressed by the Andhra Pradesh High Court in Yarlagadda Nayudamma (supra).It has expressed the following view:13.

Section 12 speaks about effect of adoption.

It has three provisos which are exceptions to the general rule contained in the main part.

The effect of adoption is that the adopted child is to be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to have been severed and replaced by those created by the adoption in the adoptive family.

Proviso (b) says that the property which is vested in the adopted child before adoption shall continue to vest in the adoptee, subject of course, to any obligation attaching to the ownership of such property including the obligation of the adoptee to maintain relatives in the family of his or her birth.

This proviso therefore clearly says that the adopted child shall take from the family of his birth t the family of adoption only that property which was vested in him before adoption and no other.

If the property which was not vested in him as the absolute owner thereof, then the said property is not taken away by him from the family of his birth to the adoptive family. The view expressed by the Bombay High Court was followed by the Patna High Court in Santosh Kumar Jalan (supra).It has also differed from the view expressed by the Andhra Pradesh High Court.

It has held as follows:6.

Section 12 which deals with the effects of adoption provides for severance of relationship with the family of birth of the adopted child and creation of a new relationship, which is the same which he had in his natural family, with the adoptive family.

As a matter of fact, by virtue of adoption a child gets transplanted into a new family whereafter he or she is deemed to be member of that family as if he or she were born son or daughter of the adoptive parents having same right which natural son or daughter had.

This transformation of rights from one family to the other family, however, is hedged in by three exceptions mentioned as provisos to Section 12.

In terms of proviso (a) though the relationship of the adopted child with his or her natural family stands severed and he or she is treated as member of the adoptive family, he or she cannot marry any person to whom he or she could not have married if adoption had not taken place.

Proviso (b) lays down that notwithstanding the adoption, if any property had vested in the adopted child before the adoption, subject to obligations if any attaching to the ownership of such property, the adoption would not divest him of that property.

Proviso (c) lays down similarly that the property already vested in any person before the adoption shall not be affected and the person concerned shall not be divested of such property by reason of such adoption.

It would thus appear that while provisos (a) and (c) create limitation on the rights of the adopted child, proviso (b) protects his rights in any property which had already vested in him before the adoption subject to certain obligations attached to the property notwithstanding the severance of his relationship with his natural family and becoming part of the adoptive family for all the purposes.

Thus far there is no dispute.

The dispute only is whether the rights of the adopted child in a coparcenery property in existence at the time of adoption is covered under proviso (b).7.

The right of a coparcener in a coparcenery property is undoubtedly a vested right, a right created by birth.

However, interpreting the said proviso so as to include interest of the coparcener in the coparcenery property in my opinion would be contrary to the main provision.

The object of proviso is to limit the application of the main provision and not to make it redundant.

In Sawan Ram v.

Mst.

Kalawanti, AIR 1967 SC1761 while dealing with the scope of the main provision the Apex Court observed.

(Para

8) "The right, which the child had, to succeed to the property by virtue of being son of his natural father, in the family of his birth, is, thus, clearly to be replaced by similar rights in the adoptive family, and, consequently, he would certainly obtain those rights in the capacity of a member of that family as an adopted son....." If an adopted child thus is to inherit the estate of adoptive parents, can he at the same time inherit his share in the estate of his natural parents after adoption?.

It would completely nullify the main provision of Section 12, such interpretation cannot be accepted.

8. The main provision of Section 12 creates, in fact recognizes, a legal fiction by which the adopted child is deemed to be the son or daughter of the adoptive parents and member of the new family of his adoptive parents.

His previous relationship with the family of birth having come to an end, the interest which the adopted child had acquired by birth cannot continue after the

adoption.

Proviso (b) interjects to protect his rights in any property which stood vested before the adoption.

But it does not mean that the adoptee will continue to have same interest in the estate of the natural family which he had acquired by birth even though he is legally deemed to be member of the new family.

That could not be the intention of the Legislature.

The Legislature is supposed to be aware of the principles of Hindu Mitakshara Law.

If the Legislature had intended to protect even the coparcenery interest of the adopted child, perhaps, proviso (b) would have been couched in different language.

As it is, the proviso protects only the property which had vested in the adopted child before the adoption.

9. What seems to create doubt, which in fact is the foundation of the appellant's case, is use of the word Vested' in the proviso.

It is however noteworthy that the word "vested" is part of the clause "any property which vested".

The question is whether the right of a coparcener in the coparcenery property vests in him any right in "any property".

It is well settled that though a coparcener gets right by birth in the coparcenery property the said right or interest is liable to fluctuation increasing by death of a coparcener and decreasing by birth of another coparcener.

A coparcener has right to partition of the coparcenery property, he can even bring about separation in status by unilateral declaration of his intention to separate from the family, and enjoy his share of the property after partition.

But it is only after such partition that property Vests' in him.

Till partition takes place he has only a right to joint possession and enjoyment of the property.

There is community of interest between all members of the joint family and every coparcener is entitled to joint possession and enjoyment of the coparcenery property.

The ownership of the coparcenery properly vests in the whole body of the coparceners and not in a member of the family.

While the family remains undivided, one cannot predicate the extent of his share in the Joint and undivided family.

Indeed, as stated above he has fluctuating interest in the property liable to being increased or decreased by deaths and births in the family.

These are the fundamentals of the Mitakshara Law of Hindu Coparcenary which are not open to any doubt or debate.

In these premises, whether it can be said that "any property" had vested in the coparcener so as to attract Proviso (b) to Section 12.

The answer in my opinion must be in the negative.

What is vested in a coparcener before adoption, is his right of Joint possession and enjoyment of the coparcenery property, I hardly need point out the distinction between the right to joint possession and enjoyment and the right to exclusive possession and enjoyment of a particular property.

According to me, what is saved under Proviso (b) is a property which had already vested in the adoptee before adoption by, say, inheritance, partition, bequeath, transfer etc., which alone can be said to vest in him, to the exclusion of otheRs.The vesting of that property is not affected by adoption. Devgonda Raygonda Patil (supra) was cited in Jadabendra Narayan Choudhury (supra).It has also considered Mullas Hindu Law 21st Edition as well as Maynes Hindu Law

15th Edition.

Relevant passages of Mullas Hindu Law 21st Edition and Maynes Hindu Law 15th Edition as reproduced in Jadabendra Narayan Choudhury (supra) are as follows:20.

The relevant observation from Mulla's Hindu Law, Edition, is reproduced hereinbelow:Proviso (b).Divesting of property vested in adoptee.

- Adoption did not have the effect under the Bengal school of Hindu law (Dayabhaga law) of divesting any 21st property which had vested in the adopted son by inheritance, gift, or under any power of self-acquisition prior to his adoption.

As regards cases governed by Mitakshara law, there was some divergence of judicial opinion on certain aspects of the matter.

The present section lays down the clear rule that any property that might have vested in the adoptee before the adoption, continues to vest in the adoptee, subject, of course, to any obligations attaching to the ownership of such property including the obligation of the adoptee to maintain relatives in the family of his or her birth.

The adopted person is not, by the fact of adoption, divested of any property already vested in him.

It follows as a corollary to that rule that the fact of adoption should not operate to the prejudice of persons related to the adoptee in the natural family who had the right to claim maintenance from such adoptee.

This proviso, as aforestated lays down that property vesting in an adoptee before the adoption continues to vest in him post his adoption, subject to certain terms and obligations.

There is a controveRs.as regards the adoptee being divested of the coparcenary property in the family of his birth.

The High Court of Andhra Pradesh has held that an adoptee retains his interest in the undivided property of the family of his birth, whereas the High Court of Patna has held that such a right comes to an end.

The High Court of Bombay has, in Devgonda Patil v.

Shamgonda Patil, dissenting from the decision of the High Court of Andhra Pradesh, held that an adoptee cannot have a vested interest in the undivided family of his birth.

The Court observed that the words 'vested property' related to property where indefeasible rights were created and thus, held that it would relate to property where full ownership was conferred.

Since there was no question of full ownership in case of coparcenary property, such property of the family of his birth could not be said to vest in a coparcener after his adoption.

The reasoning does not appear to be appropriate.

The property which vested in the adoptive child at birth, as a member of the coparcenary would continue to vest in him, by the operation of law contained in the proviso, subject to the obligations and liabilities as indicated.

Though no coparcener can be said to hold a particular share in coparcenary property, such property is held by all the coparceners as a result of the concept of unity of ownership.

The wording of the proviso is indicative of the above reasoning.

Attention is also invited to the undermentioned decision (Rangappa v.

Channamma, AIR2008 Kar 47). 21.

The relevant observation from Mayne's Hindu Law, 15th Edition is reproduced hereinbelow:7.

Adoptee's right to property of his family of birth: Proviso (b).- Similarly, nothing in the Act divests the adoptee's right to any estate vested in him or her prior to the date of adoption.

In fact, not only the property belonging to an adopted child in the natural family such as his or her selfacquired property, property inherited by him or her from other persons including his or her father or her ancestor and property held as a sole surviving coparcener in a Mitakshara family, but even the interest of a male child in a Mitakshara coparcenary would continue to vest in him as if he had separated from the coparcenary.

Dissenting from the view of Andhra Pradesh High Court, Patna High Court held that the proviso relates to the right of adoptee of joint possession and enjoyment of coparcenary property and not his independent exclusive right.

However in Devgonda v.

Shawgonda (: AIR1992 Bom 189).the Bombay High Court differing from Andhra Pradesh High Court held that section 12(b) is not attracted and the adoptee lost his coparcenary right in the family of his birth, relying upon the decision of the Supreme Court in Vasant v.

Dattu (: AIR 1987 SC389 and Agalawe v.

Agalawe (: AIR 1988 SC849 and decision of the Bombay High Court in Nalavada v.

Ananda G.

Chavan (: AIR1981 Bom

109) that if there was a coparcenary in existence in the family of birth the adoptee cannot be said to have any vested property in the joint family.

They observed, in the context of section 12 proviso (b) "vested property" means where indefeasible right is created i.e., on no contingency it can be defeated in respect of particular property, in other words where full ownership was conferred in

respect of a particular property but it is not the position in case of coparcenary property.

The coparcenary property is not owned by a coparcener and never any particular property.

All the properties vest in the joint family and are held by it.

It is submitted that this decision is not correct.

The expression "property which vested in the adopted child" would include his right by birth in the coparcenary property.

Property is an expression of wide import and will include the rights in property.

The reliance on the decisions of the Supreme Court under section 12 proviso (c) is not warranted.

Under the proviso the adoptee does not divest any person of any estate which vested in him or her before the adoption.

All that the decision laid down was that when he becomes a member of the coparcenary he gets an interest in the joint family property.

That does not mean that he divests any person of any estate.

As the Supreme Court in Vasant v.

Dattu observed "the joint family continues to hold the estate but with more members than before; there is no fresh vesting or divesting of any estate in any one".

It is to be noted that when the adoptee takes any rights he has also to fulfil the necessary obligations attached to the property including the maintenance of relatives etc.This does not include any personal obligation or liability incurred by him as a member of the natural family. In paragraph 22 of Jadabendra Narayan Choudhury (supra) has held as follows:22.

In view of such clear language in the section, this Court is of the view that the right of the petitioner to claim share in the coparcenary property is not in any way affected by adoption.

This section protects the rights already vested in the adopted child. Section 12 of the Hindu Adoptions and Maintenance Act, 1956 deals with the effects of adoption.

It specifies that an adopted child will sever all ties with the family of his or her birth on and from the date of adoption.

The second proviso of Section 12 of the Hindu Adoptions and Maintenance Act, 1956 stipulates that any property which has vested in the adopted child before the adoption shall continue to vest with him subject to the obligations, if any.

The second proviso allows the property vested in the adopted child before the adoption to continue to vest in the adopted child subject to the obligations, if any, attaching to the ownership of the property including the obligation to maintain relatives in the family on his or her birth.

The Bombay and the Patna High Courts view is that, a right in a coparcener in a Mitakshara family does not vest in a person on birth.

Consequently, on the date of adoption the adopted child loses of his rights in the Mitakshara coparcenary of his birth.

Section 19 of the Transfer of property Act, 1882 deals with vested interest.

Section 19 of the Transfer of Property Act, 1882 is as follows:19.

Vested interest.-Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.-An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person. A vested interest in a property is understood to mean that a person has acquired proprietary interest therein.

However, the enjoyment of such proprietary interest may be postponed till the happening of a certain event.

Once that event happens such person would enjoy proprietary rights in respect of the property.

A coparcener in a Mitakshara coparcenary acquires an interest in the properties of the Hindu family on his birth.

His interest is capable of variation by events such as birth, adoption or death in the coparcenary.

In the event of a partition of the coparcenary, a coparcener is entitled to a share of the properties belonging to joint Hindu family.

On partition his share gets defined.

He can still continue to enjoy his share in jointness with other family members or he can ask for partition of the properties by metes and bounds in accordance with the shares.

This interest which the coparcener in a Mitakshara family acquires by his birth in the natural family continues to remain with him in spite of the adoption in view of Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956.

In Smt.

Chunibala Barui & ORS.(supra) the Division Bench has found that even tenants of an immovable property has a locus standi to challenge the Will of the landlord

under Section 263 of the Indian Succession Act, 1925.

Here the caveator is a natural heir of the testator and has interest in the estate of the testator even on the strength of the pleadings made in the application for grant of probate.

Mr.Kapoor has referred to the stand taken by the caveator in support of the caveat.

He has emphasized that, the caveator has taken a stand that the caveator has not succeeded to the estate of the deceased by virtue of the adoption.

In the event, the probate application is directed to be considered as a contentious cause in view of the objections to the grant of probate thereto being taken by the caveator, then in such circumstances the application for grant of probate is considered as a plaint and the affidavit in support of the caveat is treated as a written statement.

The applicant for the grant of probate is considered as the plaintiff and the caveator as the defendant.

The probate application is then set down as a contentious cause and is heard as a regular suit.

From the perspective of a regular suit the caveator herein can be considered as both a necessary and a proper party in the suit.

Here the probate application has to be considered as a plaint.

The probate applicants are to be considered as plaintiffs.

The probate applicants in their plaint have admitted that the caveator would succeed to the estate of the deceased on intestacy.

Taking such statement to be true and correct, for the purposes of considering whether the caveator is a necessary or a proper party to lis, the irresistible conclusion is that the caveator is both a necessary and proper party to go to trial

for the contentious cause notwithstanding the claim of the caveator that he has not succeeded to the estate of the deceased by virtue of the adoption.

The issue raised is answered in the negative, against the petitioners and in favour of the caveator.

The request for discharge of the caveat, therefore, does not succeed.

Due to the denial of the fiRs.relief the second relief for grant of probate is also not available to the petitioner.

In view of the caveat lodged, PLA No.255 of 2011 is set down as a contentious cause.

The department is directed to take appropriate steps with regard thereto.

G.A.No.949 of 2013 is dismissed.

No order as to costs.

[DEBANGSU BASAK, J.].