

**In Re: Sunil Kumar Bhattacharjee**

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**SooperKanoon Citation :** [sooperkanoon.com/870922](http://sooperkanoon.com/870922)

**Court :** Kolkata

**Decided On :** Sep-10-1996

**Reported in :** (1997)1CALLT440(HC)

**Judge :** Basudeva Panigrahi, J.

**Acts :** [Indian Succession Act, 1925](#) - Sections 283, 284, 285 and 286

**Appellant :** In Re: Sunil Kumar Bhattacharjee

**Advocate for Def. :** Tapan Kr. Dutta and ;Abhijit Roy, Advs.

**Advocate for Pet/Ap. :** Dilip Kr. Banerjee and ;Amal Kr. Mukherjee, Advs.

**Judgement :**

**Basudeva Panigrahi, J.**

1. This revision is directed against the Judgment and order dated 25th April, 1996 passed by the learned Chief Bench, City Civil Court at Calcutta in the Probate Case No. 134 of 1995 turning down the prayer of the petitioner to be included as a party.

2. The plaintiff/opposite party filed an application on 22/12/95 in the City Civil Court at Calcutta for grant of probate to him as the named executor of the purported last will and testament dated 12th February, 1995 of the deceased Smt. Kalidasi Dasi, the widow of Late Niranjendra Nath Deb. The petitioner, after general citation,

entered appearance on 28th February, 1996 through Advocate and sought a direction against the opposite party to serve the copy of the application whereunder the latter was claiming probate of the purported will dated 25th February, 1995. In the said application the petitioner has however claimed that he may be given a chance to contest in the probate proceeding and some time be granted for filing written objection against the grant of probate.

3. The plaintiff/opposite party had seriously contested the prayer of the petitioner and challenged the status and locus standi of the petitioner to be impleaded as a party in the probate proceeding. The petitioner has filed his written objection whereunder he has challenged the capacity of the opposite party for claiming probate of the will. It is, inter alia, stated by the petitioner that the testatrix had already executed a will earlier i.e. on 23rd February, 1959. By the said will she appointed the petitioner as executor and bequeathed several items of properties to the petitioner and other legatees.

4. The learned Chief Judge, City Civil Court did not treat the above proceeding in the form of regular suit nor allowed the petitioner to contest the suit by filing the written statement. The learned Chief Judge has, inter alia, held that the petitioner having no/caveatable interest in the property has no locus standi to oppose the grant of probate. Thus, the learned Chief Judge, City Civil Court has overruled the objection of the petitioner. That is how being aggrieved by and affected with the order passed by the learned Chief Judge, City Civil Court the petitioner has preferred this revisional application.

5. Mr. Dilip Kumar Banerjee, the learned Advocate appearing for the petitioner, has urged that in this case the learned Chief Judge has over looked the relevant provisions of the Indian Succession Act and mechanically has rejected the application of the petitioner to be added as a party and for giving a chance to contest in the probate proceeding. It is, further, highlighted that immediately following the general citation the petitioner having come to the court by filing an application for leave to file written objection and the court after having granted the said application could not have summarily rejected the prayer of the petitioner for allowing him to contest in the probate proceeding.

6. Mr. Dutta, the learned Advocate appearing for the opposite party has seriously contended that no specific allegation having been taken by the petitioner denying the genuineness of the will, the order of the learned Chief Judge can not be found fault with. He, further, contended that the petitioner having not lodged any caveat could not, at a subsequent stage, oppose the grant of probate. Thus on both counts the learned Chief Judge's order is bound to be sustained in law.

7. After hearing the learned Advocates appearing for the parties and on giving anxious consideration over the matter I think the short question involves in this case is whether any contentious issue has been raised by the petitioner. In case it is answered affirmatively then the rejection of the application filed by the petitioner is bound to be spurned. The explanation to Section 286 provides what is 'contentious.' 'Contentious' means the appearance of any one in person, or by his recognised agent or by a pleader duly appointed to act on his behalf to oppose the proceeding'. In this case undisputedly the petitioner has entered appearance through his Advocate who filed an application for leave to file written objection. In the said application it is stated that the petitioner has objection to the grant of probate of the alleged will dated 12th February, 1995 executed by Kalidasi Dasi. On the basis of such application the Court has passed an order on 26th March, 1996 allowing the prayer for filing objection. Thus the court was prima facie satisfied with regard to the objection taken by the petitioner.

8. Mr. Dutta has high-lighted that the petitioner can not object to grant of probate of the will without filing a caveat but however such argument does not cut any ice. A case does not become contentious merely on filing of a caveat or a petition of objection. It becomes only contentious when some one appears to oppose the proceeding of probate. Since the petitioner is claiming to have acquired an interest under a will alleged to have been executed at an earlier point of time it prima facie appears that he might have some interest however slight it might be. Even a bare possibility of an interest is sufficient to entitle a person to oppose the grant of probate. Under Section 283 of Indian Succession Act the District Judge or District Delegate may, if he thinks proper, issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. Section 284

provides for lodging caveat against grant of probate or administration. Section 285 lays down that no proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered until the notice has been given to the caveator. Section 286 deals with the power of a District Delegate and lays down that he shall not grant probate or letters of administration in any case in which there is 'contention' as to the grant, or in which it otherwise appears to him that probate or letters of administration, ought not to be granted by this court Under Section 288 where there is contention or where the District Delegate thinks that probate or letters of administration should be refused, the documents shall be returned to the applicant. In the instant case Chief Bench, City Civil Court comes within the meaning of the District Delegate and the necessary powers were conferred on him which is not in dispute.

9. Mr. Dutta has invited my attention that since the learned Chief Judge has taken a tentative view that the petitioner has no caveatable interest this court, while exercising its revisional jurisdiction, should be wary and circumspect and ought not disturb such findings. From the above mentioned discussion it has emerged that the petitioner has challenged the capacity of the executrix for execution of the will alleged to have been made in favour of the plaintiff/opposite party, if he is not given a chance to raise his objection with regard to the grant of probate it shall work out serious prejudice on him. His objection howsoever slight it may be, should not be spurned at the first blush. Thus, it appears that he has raised a contentious issue by filing an application through an Advocate and has already filed a written petition thereof. Therefore, he should not have been precluded from filing written statement.

10. In the result, I vacate the order passed by the learned Chief Judge, City Civil Court dated 25th April, 1996 and direct him to dispose of the matter in accordance with law. In case the contentious issues are raised then the procedure insofar as it is applicable for dealing with the matter be followed and the same may be disposed of in accordance with law.

In the result, the revisional application succeeds but in the circumstance without any cost.

