

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

Civil Revision No. 3075 OF 2017.

Ananda Mohan Sardar and others.

...Petitioners.

-Versus-

Jadab Chandra Sardar and others.

....Opposite parties.

Mr. Surojit Bhattacharjee along with
Ms. Farhana Siray Ronnie and
Mr. Mani Sankar Sarkar, Advocates

... For the petitioners

No one appears

... for the opposite parties

Heard on: 09.01.2024

Judgment on: 10.01.2024

Sashanka Shekhar Sarkar, J.

This Rule, at the instance of the petitioners (the heirs of legatee Sridham Sardar) was issued calling upon opposite parties No. 1-3, to show cause as to why order No. 105 dated 06.06.2017 passed by learned Joint District Judge, 3rd Court, Dhaka in Revocation

Miscellaneous Case No. 59 of 2006 rejecting an application filed under section 264 of the succession act 1925, for sending the record of the case to the learned District Judge for disposal on the ground of its jurisdiction should not be set aside and/or such pass other or further order or orders as to this court may seem fit and proper.

During issuance of the Rule, this court also pleased to stay all further proceedings of Revocation Miscellaneous Case No. 59 of 2006 and Probate Case No. 14 of 1985 for a period of 06 (six) months which was eventually extended on 11.03.2018 till its disposal.

The facts, relevant for disposal of this Rule, are that, the predecessor of the petitioners, Sridham Sardar, as legatee filed Probate Case No. 38 of 1983 in the court of District Judge, Dhaka for granting probate of the Will dated 01.02.1970 stating that the Case property belonged to Nakul Sardar who was physically

disabled and as his eldest brother Sridham Sardar looked after him, being satisfied upon his brother, transferred his share to Sridham Sardar by executing a deed of Will on 01.02.1970. Thereafter the testator Nakul Chandra died on 04.03.1970 leaving the legatee Sridham Sardar and on his death Sridham Sardar being the legatee filed a petition for granting probate of the said Will. Thereafter the learned District Judge Dhaka transferred the said petition for granting probate to learned Joint District Judge, 3rd Court, Dhaka where the said probate case was renumbered as 14 of 1985.

The learned Joint District Judge, 3rd Court on hearing of the legatee and completing other formalities, was pleased to grant the probate vide order No. 14 dated 24.01.1994 issuing certificate in favour of Sridham Sardar. Long after of granting probate, some other relatives of the testator (Nakul Sardar)

challenging the said grant of probate filed a Probate Revocation Miscellaneous Case being No. 59 of 2006 before the self same court on 05.11.2006 for setting aside the order dated 24.01.1994 passed in Probate Case No. 14 of 1985 and for restoring the probate case to its original file and number.

In the said Revocation Miscellaneous Case, the present opposite party No. 1-3 as petitioners contended that the land in question along with other lands originally belonged to Kumar Sardar who died leaving behind a son Kashi Sardar. Kashi Sardar died leaving behind four sons namely Sridham Sardar, Subol Sardar, Jugal Sardar and Nakul Sardar. Subol Sardar died leaving behind a son namely Jadob Sardar (petitioner No. 1 of the Revocation Miscellaneous Case No. 59 of 2006). Jugal Sardar died leaving behind three sons namely Gosai Sardar, Raton Sardar (petitioners No. 2 & 3 of Revocation Miscellaneous Case No. 59 of

2006) and Samiron Sarder. Samiron died unmarried. The last son of Kashi Sardar namely Nakul Sardar was mad and physically unfit person who died unmarried on 04.03.1970 and after his death, Sridham Sardar, Jabod Sardar (son of Subol Sardar), Gosai Sardar, Raton Sardar and Samiron Sardar sons of Jugal Sardar became the owners in respect of the share of Nakul Sardar and they have been possessing the said land amicably but as now, it requires to have partition in respect of the entire property and asked Sridham Sardar on 20.10.2006 for having family amicable partition which he denied and for the first time he disclosed that Nakul Sarder has executed a will of his share in his favour.

Upon more searching the petitioners finally came to know on 29.10.2006 about the will which is false, fraudulent, collusive and not binding upon them and is liable to be set aside and the probate case is liable to

be restored to its original file and number for contesting by the petitioners.

The legatee contested the revocation miscellaneous case by filing a written objection denying all material allegation contending that the land in question belonged to Kashi Nath Sardar who died leaving behind four sons namely Sridham Sardham, Subol Sardar, Jugal Sardar and the testator (Nakul Sardar). They all got their respective shares on a family amicable settlement but subsequently a suit being partition suit No. 112 of 1961 was filed against Sridham Sardar for partition of the property belonged to Kashinath Sardar and the said suit was decreed on compromise on 12.03.1963. The testator Nakul Sardar was physically unfit but he was sound and capable to execute Will and accordingly, he being satisfied on nursing of the legatee Sridham Sardar willingly executed a deed of Will on 01.02.1970 within the

knowledge of all the co-sharers. Thereafter, Nakul Sardar died on 04.03.1970 and on his death, the legatee filed a probate case impleading all the co-sharers as necessary parties and the learned Joint District Judge being District delegate granted probate in favour of the legatee in which no illegalities or irregularities was held and as such the petitioners of the revocation miscellaneous case No. 59 of 2006 have no legal right and entity to set aside the same by filing Revocation miscellaneous case and as such, the same is liable to be dismissed.

During pendency of the Revocation Miscellaneous Case No. 59 of 2006, the legatee Sridham Sardar died leaving behind the present petitioners as his legal heirs and they have been duly substituted.

During continuation of the proceedings of Revocation Miscellaneous Case No. 59 of 2006, the present petitioners filed an application on 18.08.2015

under section 264 of the Succession Act 1925, for sending the case record of revocation miscellaneous case to the Court of District Judge for disposal as it has only the jurisdiction to do so.

The learned Joint District Judge on hearing of the parties vide his order dated 06.06.2017 was pleased to reject the application holding that though the District Judge is authorized to grant probate and revoke the probate under section 264 of the Succession Act 1925, but there is no bar to proceed with Revocation Miscellaneous case against non contesting probate of the will before the self same court.

The present petitioners thereby being aggrieved and dissatisfied with order dated 06.06.2017 preferred the instant Civil Revision and obtained this rule.

Mr. Surojit Bhattacharjee the learned Advocate appearing for the petitioners submits that the District delegates are the delegated judicial officers of the

concern District judge. The District judge, to which the probate case was filed, had sent the matter to the District delegate for entertaining the probate case, accordingly the Joint District Judge, 3rd Court, Dhaka having been delegated by the District Judge, Dhaka on proper consideration of law and facts and other circumstances, duly granted probate of the Will in favour of the predecessor of the petitioners. He further submits that the District delegates are only entitled to entertain and dispose of the probate case when there is no dispute from other sides or nobody comes to contest the probate case. Since after filing the probate case, none of the opposite parties turned up to the District delegate and as such, learned Joint District Judge as District Delegate by applying his authority granted probate of the Will in which he committed no illegalities and irregularities and the same is liable to be sustained. Mr. Bhattacharjee further submits that

if any interested person be aggrieved by the grant of probate may agitate his grievances to the District Judge who has ample jurisdiction to set aside the probate, nobody else.

Mr. Bhattacharjee lastly submits that since the opposite parties No. 1-3 sought for setting aside the grant of probate claiming themselves as nearer relatives of the testator to the self same court the revocation case is not maintainable. He argues that since the District Judge has only authority and jurisdiction to entertain and set aside the grant of probate, the revocation case should have been filed to the District Judge for revocation. He contends that the District delegate i.e. the Joint District Judge, 3rd Court, Dhaka granted probate having the delegated authority of the District Judge, Dhaka, it has no jurisdiction to set over of his own decision. The proposition of section 264 of the Succession Act, 1925, absolutely

authorizes the District Judge to entertain the case for Revocation. The petitioners of the Revocation Miscellaneous Case as have failed to invoke the proper jurisdiction, the District delegate should have sent the same to the proper court of jurisdiction or allowed them to file a fresh Revocation Case to the learned District Judge. Learned Advocate finally submits that since the learned District delegate (Joint District Judge) without doing so, misinterpreted the law, the impugned order is liable to be set aside with a direction to place the probate revocation case to the proper court of jurisdiction.

None appears to oppose the Rule.

We have heard the learned Advocate for the petitioners, perused the revisional application, the impugned order and other relevant papers as have been annexed with the application, and consulted the relevant laws.

It appears that the present petitioners are admitted heirs of the legatee Sreedham Sardar. It is also admitted that the District delegates i.e. the Joint District Judge 3rd Court, Dhaka has already granted probate and issued certificate in favour of the father of the petitioners. The opposite parties claiming themselves as the heirs of testator Nakul Sarder filed Probate Revocation Miscellaneous Case in 3rd court of Joint District Judge, Dhaka who earlier granted probate in favour of the predecessor of the petitioners. In the above premises, the following moot questions are liable to be decided;

1. Whether Revocation Miscellaneous Case filed before the District delegate, who having delegated authority granted *exparte* probate, is maintainable?
2. Whether the Joint District Judge being the District delegate of the District Judge hold any

power and jurisdiction to entertain a Revocation
Miscellaneous Case against its own judgment
granting probate and certificate?

3. Whether the District Judge has got jurisdiction
to dispose of a Revocation case after granting a
probate by its District delegate?

It appears that the opposite party Nos. 1-3 have
filed Revocation miscellaneous case in the self same
court who granted probate and certificate.

Let us see whether the District delegates has any
jurisdiction or authority to dispose of any probate
Revocation Case. Under section 264 of Succession Act
1925, the District Judge have the exclusive jurisdiction
to grant probate and revoking of probate. For ready
reference the section 364 is quoted below;

Section 264 of the Succession Act 1925:

- (1) The District Judge shall have jurisdiction in

granting and revoking probates and letters of administration in all cases within his district.

(2) Except in cases to which section 57 applies, no court shall, where the deceased is a Hindu, Muslim, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the Government has, by a notification in the official Gazette, authorized it so to do.

Power to appoint Delegate of District Judge to deal with non-contentious cases has been provided in section 265 of the Succession Act, 1925. For ready reference the same is quoted below;

Section 265 of the Succession Act 1925:

(1) The Supreme Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters

of administration in non-contentious cases, within such local limits as it may prescribe:

(2) Persons so appointed shall be called "District Delegates."

The grant of probate or letters of Administration may be revoked or annulled for just cause provided in section 263 of the Succession Act 1925. For ready reference the same is quoted below;

Section 263: The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation- Just cause shall be deemed to exist where-

(a) The proceedings to obtain the grant were defective in substance; or

(b) The grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

- (c) The grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance of inadvertently; or
- (d) The grant has become useless and inoperative through circumstances; or
- (e) The person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provision of Chapter VII of this Part, or has exhibited under that Chapter in inventory or account which is untrue in a material respect.”

The section 264 of the Succession Act, 1925 has given distinct authority to the District Judge to grant probate and to revoke the probate. The section 265 of the Act provides the delegated power to the judicial officers who are only authorized to exercise the power of the District Judge only in respect of the cases of

non-contentious. Section 265 does not authorize the District delegates to entertain any application for revocation of probates and section 263 of the said Act specified for what causes the probate can be revoked.

In the instant case, the present opposite parties No. 1-3 have filed revocation miscellaneous case alleging that as the grant of probate was obtained by fraudulent means and suppressing the notices upon the real heirs of the testator, the same is not binding upon them and the same is liable to be set aside.

Section 264 of succession Act authorizes to revoke the probates only by District Judge, nobody else. Since the Joint District Judge without considering the above proposition of law, was proceeding with the case, the petitioners filed an application for transferring the same to the District Judge for disposal under the authority of section 264 of the Act. But the learned Joint District Judge while disposing of the application

came to wrong finding that though the District Judge has exclusive jurisdiction to grant and revoke the probate but as the Revocation Miscellaneous Case is against granting of uncontested probate, there was no bar to proceed with the same by the self same court.

It appears that trial court (Joint District Judge) in adjudicating the application for transferring the case records to the proper court of jurisdiction has failed to apply his prudence judicial capabilities and upon misconception of law passed the impugned order. In the case of Mohammed Chan Miah and others vs. Barista Krishna Kundu and others reported in 31 DLR 97 it was held that “the statutory competence to revoke a probate is exclusively a matter of District Judge who alone has jurisdiction in the matter. The further indication available from the above provision is that only in non contentious cases the district delegate may grant probate or letter of administrations. There is a

conspicuous omission as regards the powers of the District Delegate relating to revocation of probate or letter of administration evidently a matter becomes contentious as soon as the same is challenged. The nature of revocation proceedings is in the nature of challenge to the will or the probate or the proceedings as the case may be. In the circumstances, the District Delegate, in terms of the statute, is not authorised in law to entertain or to proceed with an application for revocation of probate granted by him in a non-contentious matter it has been urged by Mr. Ahmed that the District Delegate may entertain a petition but he has no jurisdiction to grant revocation, it does not stand the scrutiny of reason that a court is vested with jurisdiction without the power to grant relief prayed for. Evidently, the legislature did not intend to invest the District Delegate with the jurisdiction to entertain a contentious matter. As observed earlier, a revocation proceeding is itself in the nature of contentious matter since the contention, the challenge is the basis for the said

proceeding. It, therefore, follows that the learned District Delegate acted illegally and with material irregularity in the exercise of jurisdiction in entertaining the petition for revocation of the probate granted by him earlier in a non-contentious proceeding before him. ”

We get support the above decision in the case of Kailash Chandra vs. Nanda Kumar reported in AIR 1944 Calcutta 385.

It is held in the case of Haripada Ghosh and another vs. Gopal Chandra Ghosh reported in 15 BLD (AD) 140 that “the section 286 of the Succession Act, 1925, ceases the hands of District Delegate as soon as a contentious as to the grant of probate or letters of administration is raised in any case. Even in the case of non- contentious petition, in case of any doubt, the District Delegate has to seek direction of the District Judge.”

It is held in the case of Kalpona Das Gupta vs. Government of Bangladesh and another reported in 1983 BLD 4 that “both the District Judge and District Delegate

may upon an application for grant of probate or letters of administration, issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings. But it is only the District Judge who can dispose of an objectors application with his appearance the proceedings ceases to be non-contentious. If the District Delegates then proceeds with the case he exceed his jurisdiction– whether the party opposing the proceedings has any locus standi or not will be decided not by him but by the District Judge.”

So, on considering the above submissions advanced by the learned counsel for the petitioner and perusing the application and all other materials, papers attached there with and relevant laws as well as settled principles of law mentioned above we are of the view the learned Joint District Judge 3rd Court Dhaka, as District Delegate, has got no jurisdiction to entertain or dispose of the petition of revocation of the probate granted by him earlier is a non-contentious proceedings and the learned District Judge

has exclusive jurisdiction to hear and dispose of any revocation of probate case and as such, we find merit in the Rule.

In the result the Rule is made absolute, however, without any order as to costs. The impugned order dated 06.06.2017 is set aside.

The Revocation Miscellaneous Case No. 59 of 2006 be transmitted to the Court of District Judge, Dhaka for disposal in accordance with law.

Office is directed to communicate the judgment to the courts below at once.

(Justice Sashanka Shekhar Sarkar)

I agree,

(Justice Md. Badruzzaman)

A.B.Sutar
B.O.