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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/100/2026
IA NO: GA/1/2026
IN THE GOODS OF –
BINA DEVI BAJORIA (DEC.)
- AND-
GOUTAM ROY

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

AND

The Hon'ble JUSTICE ARJUN RAY MUKHERJEE

Date: 25th September, 2026.

Appearance:

Mr. Ranjan Bachawat, Sr.Adv.

Mr. Biswanath Chatterjee, Adv.

Mr. Rohit Banerjee, Adv.

Ms. Madhurima Halder, Adv.

Mr. Subhankar Chakraborty, Adv.

Ms. Sayani Gupta, Adv.

...for the appellant

Mr. Jishnu Chowdhury, Sr.Adv.

Mr. Ratul Das, Adv.

Mr. A. Agarwalla, Adv.

Ms.Shatabdi Kundu, Adv.

...for the executor

The Court:

1. The appeal arises out of an order dated March 31, 2026 passed in PLA 234 of 2022. Learned Trial Judge disposed of GA 3 of 2023 and GA 4 of 2023 filed in connection with the probate proceedings.
2. His Lordship held that the caveator/appellant herein did not have a caveatable interest in the estate of the testatrix, as the caveator was neither

a relative nor a creditor of the testatrix. The concept of 'caveatable interest' came for consideration on numerable occasions and by applying the principle laid down in those decisions, His Lordship held that caveat should not be entertained at the instance of a person who had no real interest in the estate of the deceased. Even a transferee pendent lite, without the leave of the Court, would not have a caveatable interest and should not be impleaded as a party in a probate proceeding. A person could not be impleaded as a party on the mere apprehension that he may have caveatable interest in future.

3. Upon assessing the facts of the case, it was held that a civil suit was already pending between the caveator, M/s Bina Guri Investment Private Limited and the legal heirs of the testatrix. The suit was for cancellation of certain deeds and for setting aside a compromise decree. In the event the suit succeeded, the caveator would be entitled to the property in question, but at present the caveator did not have any right, title and interest in the property. Pendency of the litigation did not confer right, title and interest in the property. Such claim to title and interest would be subject to the outcome of the civil suit that was pending. In other words, the application was filed by appellant on a hope that, he may acquire real interest in the property at a future date. Under such circumstances, the application filed by the caveator/appellant was dismissed.

4. GA 3 of 2023 was an application filed by the executor, for discharge of the caveat. Accordingly with the above observations, the said application was also disposed of.
5. Mr. Chatterjee, learned advocate for the appellant submits that one of the estates mentioned in the affidavit of asset of the testatrix was the property situated at 24/2, Alipore Road, Kolkata-700027. Future sale proceeds from sale of the said property had been bequeathed to the beneficiaries/legatees under the Will. If the probate was granted in respect of the property in question, right, title and interest of the appellant would be adversely affected. Future sale of such property could not take place in view of the appellant's claim. The testatrix did not have the capacity to bestow the sale proceeds from the property to the legatees. It is also alleged that the Will was executed under suspicious circumstances.
6. In order to bring such aspects on record and to contest the prayer for grant of probate, the application being GA 4 of 2023 was filed before the learned Trial Judge.
7. Mr. Chatterjee submits that, the learned Trial Judge misconstrued the principles of law laid down by the Calcutta High Court. To support of his contentions, Mr. Chatterjee has relied upon the following decisions. "Jagjit Singh & Ors. vs. Pamela Manmohan Singh" : (2010) 5 SCC 157, "Asim Kumar Chattaraj & Anr. vs. Sankar Prasad Chattaraj & Ors. : (2011) 5 CHN 52, "Smt. Ashoka Dhar & Anr. vs. Dr. Partha Banerjee & Ors. : (2012) 1 CHN 126 and in the matter of Vikash Jain reported in (2019) 5 CHN 476.

8. Mr. Chatterjee went on to submit that, if a person had even a slightest interest in the estate of the testator, such person was entitled to file a caveat and contest the grant of probate of the Will. Thus, the bare possibility of an interest would also be sufficient to entitle the appellant to enter caveat in the probate proceeding. The expression “claiming to have any interest in the estate of the deceased” was wide enough to include persons having possibility of an interest. In this case, the interest was such that, grant of probate would prejudicially and adversely affect the right of the appellant. The expression “caveatable interest” includes transferees, tenants and many others. The expression has wide amplitude and the probate proceeding was a proceeding in rem.
9. Mr. Das, learned advocate for the executor and probate applicant submits that the appellant has questioned the title of the property by filing a suit being CS 100022 of 1996 which is pending before the appropriate Civil Court. On the death of the testatrix, the application for substitution was filed. The suit was filed for a declaration and cancellation of the instrument and for recovery of possession in respect of the property located at 24/2, Alipore Road, Kolkata-27. By an order of injunction, the defendants in the suit were restrained from disposing of or encumbering the property in any manner and from creating any third party interest. The said order of injunction is subsisting. Hence, in the probate proceeding, such question of title cannot be decided and if the appellant is added as a person having caveatable interest in the probate proceeding, in that event, the question of

title would have to be gone into, which is not permissible in the law. Under such circumstances, Mr. Das has supported the decision of the learned Trial Judge.

10. Having considered the contentions of the parties, we are in agreement with His Lordship and we dismiss the appeal for the following reasons:-

- (a) In order to implead a person in a probate proceeding, the said person is required to have an interest or a semblance of an interest in the “estate of the deceased”. Mr. Chatterjee’s argument is that the property in question was not the estate of the deceased. The title/interest of the deceased in respect of the said property is under challenge in a civil court and the property has been sufficiently protected by an interim order of injunction.
- (b) The fear that the grant of probate will bestow a title in favour of the testatrix is misconceived. In a probate proceeding, title is not adjudicated. The grant of probate is a declaration that the Will is genuine and had been proved.
- (c) The argument of Mr. Chatterjee is futuristic. According to him, in the event the suit is decreed and the title of the appellant is declared adverse to the title of the testatrix/her heirs and the company, in that event, the appellant would acquire right, title and interest over the self-same property, and as such, he must be allowed to contest the probate proceeding. We do not agree. The appellant has already approached

the civil court and he shall always be at liberty to take such steps as may be available in law, to assert his right, title and interest in the property. In the event he is successful in the suit, the consequences will follow. However, the appellant does not have any right to contest the probate proceeding on the ground of lack of capacity of the testatrix to bequeath future sale proceeds of the said property upon the legatees.

11. In *Jagjit Singh* (supra), a question had been referred to a large Bench. The said decision did not lay down a different proposition than what we have discussed hereinabove.
12. In the decision of ***Asim Kumar Chattaraj*** (supra), a purchaser from one of the heirs of the testator was before the Court. Unless the purchaser was allowed to contest the proceeding, his right, title and interest which he derived from the heirs would be prejudicially affected by the grant of probate, inasmuch as, the purchaser had stepped into the shoes of the legal heirs . The purchaser had a caveatable interest.
13. In ***Smt. Ashoka Dhar*** (supra), the persons who sought to be added in the proceeding were near relations of the testator and claimed interest in the estate on the basis of a deed of settlement executed by the testator himself.
14. In ***Vikash Jain*** (supra), the issue was whether near relations had a right of service of citations or the same could be dispensed with.
15. None of the above decisions apply to the facts of this case.

16. Thus, unless a person has an interest in the estate of the deceased, he will not have a caveatable interest. A person who challenges the title of the deceased in respect of any of the assets which find mention in the affidavit of assets, he has to do so by approaching the appropriate civil court. A probate proceeding is a declaration of the genuineness of the Will and appointment of the Executor and nothing beyond. This is not a case in which a line of succession or a right derived from the successors would be denied, in the event probate is granted.
17. Under such circumstances, we do not find any reason to interfere with the order impugned. The appeal and the application are dismissed.

(SHAMPA SARKAR, J.)

(ARJUN RAY MUKHERJEE, J.)