
(1989) 1 CALLT 426 : 93 CWN 812

Calcutta High Court

Case No: Testy Suit No. 11 of 1986

In Re: Smt. Tarak Bala
Dasi (Deceased)

Vs

APPELLANT

RESPONDENT

Date of Decision: Oct. 11, 1988

Acts Referred:

- City Civil Court Act, 1953 - Section 5
- Succession Act, 1925 - Section 300

Citation: (1989) 1 CALLT 426 : 93 CWN 812

Hon'ble Judges: Prabir Kumar Majumdar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prabir Kumar Majumdar, J.

This is an application for probate of the last will and testament of Smt. Tarak Bala Dasi. The petitioner is the sole executrix named in the last, will and testament of the deceased Smt. Tarak Bala Dasi.

2. The deceased a Hindu governed by the Dayabhaga School of Hindu Law died on 20th November, 1985 at No. 2, Amrita Lall Bose Street, Calcutta within the local limits of the Ordinary Original Civil Jurisdiction of this Court. The deceased left Will and Testament in Bengali, dated 23rd February, 1978 and the said Will and Testament was registered at the Calcutta Registry Office. By the said Will and Testament the petitioner was appointed by the testatrix as the sole executrix. It is alleged in the petition that the testatrix left the property, within the Ordinary Original Civil Jurisdiction of this Court and the testatrix was also Shebait of the deity of Sree Sree Naru Gopal Jew located at No. 2, Amrita Lall Bose Street, Calcutta which is also situate within the Ordinary Original Civil Jurisdiction of this Court. It is also alleged by the petitioner that the said Will was duly executed. The citation was issued to the person interested and pursuant thereto a caveat has been filed by one

Manarama Dey daughter of the testator Tarak Bala Dasi.

3. By the said Will and Testament, the testatrix claiming to be the Shebait in respect; of Sree Sree Naru Gopal Jew at No. 2, Amrita Lal Bose Street, Calcutta and in respect of Sree Sree Sambhu Nath Jew in the premises situated at Kashi (Uttar Pradesh) and by virtue of the testatrix having a right of making appointment of Shebait in her place and stead made appointment of her eldest daughter Smt. Bhagabati Seal, the petitioner herein as Shebait Sree Sree Naru Gopal Jew of premises No. 2, Amrita Lal Bose Street, Calcutta after her death and whatever right title and claim belonging to the testatrix should vest on the said daughter the petitioner herein during her life time and on her death her youngest married daughter Smt. Rubi Dutta, wife of Shri Sambhu Nath Dutta shall be the Shebait of said Sree Sree Naru Gopal Jew in her place and all right title and claim therein shall be vested on her and she shall be entitled to appoint Sabayat in her place and stead in turn. It was also provided in the said will for the appointment of one Shri Shyamal Dey son of testatrix's youngest daughter Smt. Manorama Dey an Shebait of Sree Sree Shambhu Nath Jew, Kashi in place and stead of the testatrix after her death and the testatrix also gave him power for making appointment of Sebayat in her place and stead which shall be effective after her death. The petitioner makes an application for probate of the said will.

4. Mr. Utpal Bose Learned Advocate appearing for the petitioner submits that shebait is a property and such property has been bequeath in favour of the petitioner and also the son of the cave matrix Smt. Manorama Dey.

5. Mr. Sujit Auddy, Learned Advocate appearing for the caveator raises preliminary objection as to the maintainability of this application and has contended that this Court has no jurisdiction to entertain this application in as much as the part of the property being in Calcutta, the City Civil Court and not the High Court shall have jurisdiction to try and entertain the proceedings under Indian Succession Act (hereinafter referred to as the Succession Act) by virtue of City Civil Court Amendment Act, 1980. Mr. Auddy submits that u/s 2 of the City Civil Court Act, 1953" (hereinafter referred to as the Act) the City of Calcutta means the area comprised within the local limits for the time being of Ordinary Original Civil Jurisdiction of the High Court and Section 2(2) of the said Act, City Civil Court means the Court established u/s 3 of the said Act. He submits that u/s 5 of the said Act the local limits of the jurisdiction of the City Civil Court shall be the City of Calcutta and it is provided in Section 5(2) that subject to the provision of the said Sections 3 and 4, City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of the Civil nature not exceeding Rs. 1 lac in value. Mr. Auddy refers to Section 5(3) (iv) of the Act which provides that City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try any proceedings under Indian Succession Act 1925. He refers to Section 5(5) of the Act which refers that all suits and proceedings which are not so far triable by the City Civil Court shall continue to be triable by the High Court or the Small Causes Court or any other Court, tribunal or authority, as the case may be, as hereto before.

6. Mr. Auddy, therefore, contends that the property, claimed in respect of the deity at premises No. 2, Amrita Lal Bose Street, Calcutta is admittedly within the Ordinary Original Civil Jurisdiction of this Court and the pecuniary value thereof being under Rs. 1 lac in value, the City Civil Court has jurisdiction and City Civil Court should, not the High Court, have jurisdiction to entertain and try any proceedings relating to the grant of probate of the said Will and Testament of the deceased.

7. Mr. Auddy has also referred to Section 21 of the Act which provides that the provision of this Act shall have effect notwithstanding anything to the contrary in any other law, including, in particular, the Letters Patent of the High Court. Mr. Auddy also makes a specific reference to the second schedule to the Act. With regard to the Indian Succession Act, the said Amendment Act being City Civil Court Amendment Act, 1980, hereinafter referred to as the Amendment Act, makes certain Amendments which are indicated in the second schedule. By Section 2 Clause (bb) a proviso had been added to Section 273 which reads that provided that as respect the area comprised within the local limits for the time being of the Ordinary Original Civil Jurisdiction of the High Court at Calcutta references to a District Judge in this Act shall be construed as references to the City Civil Court established under the City Civil Court Act, 1953. By virtue of this Amendment, as it appears in Section 273 of the Indian Succession Act, Clause (a) of the proviso stood omitted. Mr. Auddy also draws the Courts attention to the Section 274 of the Succession Act and by virtue of the said Amendment Act, a new sub-section has been substituted which reads that where probate or letters of administration has or have been granted by a District Judge with the effect referred to in the proviso to Section 273, the District Judge shall send a certificate thereof to the High Court to which such District Judge is subordinate and to such of the other High Courts. It also appears that by virtue of the said Amendment Act, Section 300 of the Succession Act has been omitted,

8. Mr. Auddy, therefore, submits that the effect of the said Amendment Act is that whether the entire property or the part of the property is within the jurisdiction of the City Civil Court and in respect of which a Will has. been made then any application for grant of probate of the said Will should be made to the City Civil Court at Calcutta and not to this Court.

9. In support of his submission that in the present case, this application, for probate can only be entertained by the City Civil Court and not this Court, he makes reference to Section 270 of the Succession Act, which,, inter alia, provides that probate of the Will to the estate of the deceased person may be granted by a District Judge under the Seal of the Court if it appears that the testator at the time of his decease had a fixed place of abode or any property, moveable or Immovable within the jurisdiction of the Judge. Mr. Auddy submits that inasmuch as the part of the property here is within the jurisdiction of the City Civil Court this Court will have jurisdiction to entertain the application for grant of probate of the will being subject matter of this application. Mr. Auddy refers to "any" as meaning a part of the property. Mr. Auddy next refers to Section 271 of the Act which provides inter alia, that when an application made to the Judge of the District in which the

deceased had no fixed abode at the time of his death, it shall be at the discretion of the Judge to refuse to entertain the application, if in his judgment it could be disposed of more justly or conveniently in another district. Mr. Auddy then refers to Section 299 of the Indian Succession Act which, inter alia, provides that every Order made by a District Judge shall be subject to appeal to the High Court in accordance with the provision of the Code of Civil Procedure. Mr. Auddy then refers to Section 300 of the Indian Succession Act, which, inter alia, provides that the High Court shall have concurrent jurisdiction with the District Judge in exercise of the powers hereby conferred upon the District Judge. Mr. Auddy has already drawn the Court's attention to the said Amendment Act which omitted Section 300 of the Succession Act so far as the City Civil Court is concerned.

10. Mr. Auddy then refers to Clause 34 of the Letters Patent under which the testamentary and intestate jurisdiction of this Court is indicated. Under Clause 34 of the Letters Patent, this Court has jurisdiction in relation to granting the probate of the last Will and Testament, and letters of administration of the case, and all other effects whatsoever of the person dying intestate whether within or without Bengal Division and this High Court also shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established. Mr. Auddy then refers to Clause 11 of the Letters Patent which indicates the local limits of the Ordinary Original Civil Jurisdiction.

11. It is, therefore, the submission of Mr. Auddy that in view of the specific provision contained in the said Amendment Act, the matters under Indian Succession Act including the grant of probate can be entertained by City Civil Court at Calcutta if the property in question or part thereof is situate within the local limits of the City Civil Court as defined in the City Civil Court Act, 1953.

12. Mr. Utpal Bose Learned Advocate appearing for the petitioner submits that the similar objection as raised by Mr. Auddy has also been raised in a case, *In Re: Sailendra Nath Sarkar* reported in 1984 (2) CHN 99 and this Court dealing with the said case, after referring to various provisions of the Succession Act as also Clause 34 of the Letters Patent has held, inter alia, that if either the deceased died having a fixed place abode or leaving any assets outside the jurisdiction of the City Civil Court but within the State, then the High Court should have jurisdiction to grant probate or letters of administration as the case may be, under Clause 34 of the Letters Patent. It was held by this Court in the said case that Section 5(3) of the Amendment Act has affected the jurisdiction conferred on the High Court by Clause 34 of the Letters Patent only in cases arising exclusively within the territorial jurisdiction of the City Civil Court as defined in Section 2(3) of Act.

13. Mr. Utpal Bose submits that in the present case admittedly the bequests by the said Will and Testament are not exclusively within the territorial jurisdiction of the City Civil Court as defined in Section 2(3) of the City Civil Court Act. Mr. Bose further submits that the said Amendment Act has not affected the jurisdiction vested in this Court by Clause 34 of the Letters Patent where any properties is within the "Bengal Division" then this

Court has jurisdiction to entertain application for probate under Indian Succession Act. According to Mr. Bose, this jurisdiction is only affected where the entire property bequeathed by the Will in respect of which the probate has been prayed for is within the jurisdiction of the City Civil Court then this Court will not entertain such application for probate. But this is not so according to Mr. Bose in the cases where the part of the properties is outside the jurisdiction of the City Civil Court or in other words the properties are not the entirely within the jurisdiction of the City Civil Court, the High Court can entertain the application and try the same exercising jurisdiction under Clause 34 of the Letters Patent. Finally Mr. Bose submits that in view of the provisions contained in Clause 34 of the Letters Patent and in view of the decision of this Court in the case reported in 1984 (2) C.H.N. 99, this Court should entertain and decide the application on merits.

14. The question that has arisen in this application is a question on which there is no Direct Authority except the said Single Bench Decision, referred to above. I have requested Mr. P. K. Ray to assist the Court in the matter. Pursuant to my request he has kindly agreed to assist the Court and make submission on the question.

15. Mr. P. K. Ray has referred to the Clause 34 of the Letters Patent and according to him if an application for probate is in respect of a property or the testator has a place of abode which is within "Bengal Division" as indicated in Clause 34, this Court has jurisdiction under Clause 34 of the Letters Patent to entertain and decide the application. Mr. Ray submits that Section 300 of the Succession Act has been omitted by the said Amendment Act so far as the City Civil Court is concerned. But the High Court has jurisdiction even u/s 300 of the Succession Act read with Clause 34 of the Letters Patent, if the part of the property is outside the jurisdiction of the City Civil Court but within the limits of the State. Mr. Ray gives an example. If the testator has bequeathed a part of the property situate in the district of Howrah and a part of the property situate in the district of Hooghly by Will and Testament, and the propounder makes an application for grant of probate either in the Court of Hooghly or in the Court of Howrah, any of the such Court will have jurisdiction. But if the propounder makes an application for probate of said Will in the High Court at Calcutta, the High Court at Calcutta in that case will also exercise jurisdiction and entertain this application by virtue of provision contained in Clause 34 of the Letters Patent, as the property is in the "Bengal Division".

16. Mr. P. K. Ray submits that as it appears from the Will and Testament in the present case the shebaiti right is only in respect of the part of the property situated within the Ordinary Original Civil Jurisdiction of this Court which is now under the City Civil Court Act is also the jurisdiction of the City Civil Court. It will also appear from the said Will that the other shebait right in respect of another property which is admittedly situated outside the jurisdiction of the City Civil Court as also beyond "Bengal Division" as indicated under Clause 34 of the Letters Patent. Now the question to be considered by this Court is if a part of the property situate outside the limits of the State now "Bengal Division" then which Court can entertain an application for probate in respect of the said Will bequeathing the property which is, inter alia, admittedly situated outside the limits of the

State. Mr. Ray submits that" such an application for probate in respect of the Will bequeathing the property which is situated outside the limits of the State cannot be entertained by this High Court under Clause 34 of the Letters Patent. It is his submission that under Clause 34 of the Letters Patent, the High Court can only entertain the application for probate of an Will bequeathing at least a part of the property which is situated within the limits of the State or "Bengal Division" as contemplated in the Letters Patent. If it is, however, found, according to Mr. Ray that the Will in question covered a property which is outside the limits of the State then this Court cannot entertain such application, Mr. Ray in particular reference to the expression "except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty"s Letters Patent, submits that in the present case admittedly a shebaiti right is bequeathed by the said Will in respect of the property situate at Kashi in the State of Uttar Pradesh which is under the territorial jurisdiction of the Allahabad High Court. Therefore, a part of the property is within the jurisdiction of Allahabad High Court and as such this Court should not entertain this application for grant of probate or in other words does not have any jurisdiction over the matter where admittedly part of the property outside the limits of the State and a part of the property is within the territorial jurisdiction of this Court. Therefore, it is the submission of Mr. Ray that in view of this situation arising in the present case, this Court cannot entertain the application in question..

17. By the Will, dated 22nd February 1978 the testatrix appointed the petitioner as the Sold Executrix and it was provided in the said Will that the daughter of the testatrix Smt. Bhagabati Seal would be Shebait of Shri Shri Narugopal Jew at premises No. 2, Amrita Lal Basu Street, Calcutta within the jurisdiction of Original Side of this Court and also bequeathed the right, title and interest belonging to the testatrix in respect of said shebaiti to the said daughter during her life time and on her death the youngest daughter of the testatrix, Smt. Rubi Dutta would be Shebait of said Shri Shri Narugopal Jew in her place and stead and all right title and claim shall be vested on her and shall be entitled to appoint Shebait in her place and stead in turn. By this Will it was also provided that Shri Shyamal Dey son of youngest daughter of the testatrix, Smt. Monorama Dey, as Shebait of Shri Shri Sambhunath Jew of Kashi in place and stead of the testatrix and after her death the power was given to said Shri Shyamal Dey for making appointment of Shebait in his place and stead. It was the further declaration by the said Will that after death of the testatrix, Smt. Bhagabati Seal should get all the right title and interest enjoined by the testatrix during her life time and the second married daughter of Smt. Rubi Dutta also should get after her death and to that no one shall be entitled to raise any objection or plea.

18. It appears that a Shebaiti right, and right, title and interest of the testatrix in respect of the said Shebaiti right for the property within the jurisdiction of this Court was given to her first daughter Smt. Bhagabati Seal and after her, Smt. Rubi Dutta and the Shebaiti right in respect of the property at Varanashi outside the jurisdiction of this Court and right, title and claim in respect of the said Shebaiti right for the said deity of Shambu Nath Jew at

Varanashi which is outside the jurisdiction of this. Court was bequeathed to the said Shyamal Dey.

19. The petitioner places heavy reliance in the decision of this Court in the goods of Sailendra Nath Sarkar deceased reported in 1984 (2) C.H.N. 99. In that case the testator died leaving a Will and properties all within the jurisdiction of the District Judge, Howrah. The executors of the Will made an application in the original side of this Court for grant of a probate of the said Will. In view of the said City Civil Court (Amendment) Act, 1980, a question arose as to whether the application in the instant case was entertainable by the High Court. It was submitted that if the place of abode at the time of death or the assets left by the deceased are outside the territorial jurisdiction of the City Civil Court then the Amendment cannot affect the jurisdiction of the High Court under Clause 34 of the Letters Patent, unless it can be shown that there is a specific negation of such power and jurisdiction of the High Court by any other special statute. It is also contended that there by virtue of the said Amendment of the City Civil Court Act, the High Court lost jurisdiction in cases where the deceased dies within the territorial jurisdiction of City Civil Court leaving Assets of the value upto Rs. 1 lakh. It was further submitted that by the deletion of Section 300 of the Indian Succession Act by the said Amendment Act, the jurisdiction vested in the High Court has been taken away and the City Civil Court alone has a jurisdiction on all probate proceedings irrespective of value provided it has territorial jurisdiction. It was held by this Court that the deceased died having a place of abode as also leaving the estate within the jurisdiction of the District Judge, Howrah, the High Court has jurisdiction to entertain and try testamentary proceedings relating to the estate and the deceased under Clause 34 of the Letters Patent.

20. In the present case the deceased died having a place of abode at Calcutta within the jurisdiction of the City Civil Court as also original side of this Court.

21. Now the question that arises in this case is as to whether this Court in terms of Clause 34 of the Letters Patent can have jurisdiction over the probate proceedings irrespective of the fact that by deletion of Section 300 of the Indian Succession Act so far as City Civil Court is concerned, and also by the said City Civil Court (Amendment) Act, 1980 City Civil Court does have jurisdiction of the matter. Before deletion of Section 300 of the Indian Succession Act by the said Amendment Act so far as City Civil Court concerned in both High Court and the City Civil Court had concurrent jurisdiction, and the High Court had power to grant probate and letters of administration.

22. u/s 2(3) of the City Civil Court Act, City of Calcutta means the area comprised within the local limits for the time being of the ordinary original jurisdiction of the High Court. Section 5 of the City Civil Court Act, 1953 as amended by Section 2 of City Civil Court (Amendment) Act, 1980 provides as follows :

1. The local limits of the jurisdiction of the City Civil Court shall be the City of Calcutta.

2. Subject to the provision of Sub-sections 3 and 4, the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a Civil nature not exceeding Rs. 1 lakh in value.

3. The City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try any proceeding under:

(i) the Guardians and Wards Act, 1890 (8 of 1890).

(ii) the Presidency Towns Insolvency Act, 1909 (3 of 1909).

(iii) the Indian Lunacy Act, 1912 (39 of 1925).

(iv) the Indian Succession Act, 1925 (39 of 1925).

4. The City Civil Court shall not have jurisdiction to try suits or any proceedings of the description specified in the first schedule.

5. All suits and proceedings which are not triable by the City Civil Court shall continue to be triable by the High Court or the Small Causes Court or any other Court, Tribunal or Authority, as the case may be here to before.

23. In the second schedule substituted by City Civil Court (Amendment) Act, 1980 following proviso has been added to Clause (bb) of Section 2 of the Indian Succession Act provided that as respect the area within the local limits for the time being of the Ordinary Original Civil Jurisdiction of the High Court at Calcutta reference to a District Judge in the Act shall be construed as a reference to the City Civil Court established under the City Civil Court Act, 1953 (West Bengal Act XXX of 1953).

24. By the said schedule Section 300 of the Indian Succession Act 1925 has been omitted.

Clause 34 of the Letters Patent is as follows:

"34. Testamentary and intestate jurisdiction-And we do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like powers and authorities as that which may now be lawfully exercised by the said High Court, except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent, in relation to the granting of probates of last Wills and Testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate whether within or without said Bengal Division, subject to the Orders of the Governor General in Council as to the period when the said High Court shall cease to exercise the testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established: Provided always, that nothing in these Letters Patent contained shall interfere with the provisions of

any law which has been made by the Competent Legislative Authority for India by which power is given to any other Court for grant of such probates and letters of administration."

25. Now the question that calls for consideration in this case is to what extent the jurisdiction of this Court in testamentary and intestate matter conferred by Clause 34 of the Letters Patent 1865 has been affected by the City Civil Court (Amendment) Act, 1980. In the case [Maniklal Shah Vs. Hiralal Shaw](#), it has been held that under Clause 34 of the Letters Patent 1865, the Court's jurisdiction in testamentary matter is co-extensive within the jurisdictional limits of the province (now State of West Bengal).

26. This Court has construed in the goods of Sailendra Nath Sarkar (Supra), Section 5(3) of the City Civil Court Act as amended as that the said provision has affected the testamentary and intestate jurisdiction conferred in the High Court by Clause 34 of the Letters Patent only in cases arising exclusively within the territorial jurisdiction of the City Civil Court that is where the deceased died having a fixed place of abode or leaving any asset within the City of Calcutta as defined by Sections (2) and (3) of the City Civil Court Act. This Court further observed that in this case that if either the deceased had died having a fixed place of abode or leaving any assets outside the City Civil Court but within the State then the High Court shall have jurisdiction to grant of probate or Letters of Administration as the case" may be under Clause 34 of the Letters Patent.

27. Therefore, the view taken by this Court in Sailendra Sarkar's case (Supra) is that if City Civil Court by virtue of the said Amendment Act has jurisdiction over the matter then by virtue of deletion of Section 300 of the Indian Succession Act, so far as City Civil Court is concerned, this Court cannot have any jurisdiction over a testamentary matter even under Clause 34 of the Letters Patent. But, according to the view taken by this Court in the said case, if the place of abode or the Assets are entirely outside the jurisdiction of the City Civil Court but within the State of West Bengal then this Court by virtue of Clause 34 of the Letters Patent has got jurisdiction to try the testamentary proceedings even before the deletion of Section 300 of the Indian Succession Act, and after.

28. In the present case, admittedly the place of abode is within the jurisdiction of City Civil Court as also the jurisdiction of the Original Side of this Court. It is also not in dispute that the part of the property is within the jurisdiction of City Civil Court and also within the jurisdiction of the Original Side of this Court. It is not in dispute that the value of the property is within the pecuniary limits of the City Civil Court.

29. It is also the decision of this Court in Maniklal v. Hiralal (supra) that High Court's testamentary jurisdiction is co-extensive within the limits of the province and it is not required that there should be any property within the original jurisdiction.

29. Therefore, in terms of Clause 34, the High Court's testamentary., jurisdiction is exclusive within the limits of the province and it is not required that there should be any property within the original jurisdiction. Therefore, if the place of abode or entire assets

bequeathed is outside the jurisdiction of original side but within the limits of the province then under Clause 34, this Court can exercise jurisdiction over the testamentary proceedings. It is also provided under Clause 34, inter alia, "that nothing in this Letters Patent contained shall interfere with the provision of any law which has been made by the Competent Legislative Authority for India by which the power is given to any other Court to grant such probate and letters of administration". By virtue of the City Civil Court (Amendment) Act, 1980 this Court has no jurisdiction over the matter where the place of abode is within the jurisdiction of the City Civil Court or the assets of the value not exceeding 1 lakh, are within the jurisdiction of the City Civil Court even though .the same is also within the jurisdiction original side of this Court. Before deletion of Section 300 of the Indian Succession Act by the said Amendment Act so far as City Civil Court is concerned, the High Court, could exercise a concurrent jurisdiction along with City Civil Court being the District Court within the meaning of the Indian Succession Act. But after the deletion of Section 300 of the Indian Succession Act by the said City Civil Court (Amendment) Act, 1980, this Court has lost concurrent jurisdiction along with the City Civil Court.

30. In the case of Sailendra Nath Sarkar (Supra) the place of abode and also the entire assets were outside the original jurisdiction of this Court, but within the limits of the State of West Bengal, and therefore, this High Court has jurisdiction over the testamentary proceedings under Clause 34 of the Letters Patent. There both the places of abode and the assets were within the jurisdiction of Howrah Court.

31. In the present case both the places of abode and part of the assets are within the limits of the State of West Bengal but also fall within the jurisdiction of the City Civil Court. By virtue of the City Civil Court (Amendment) Act, 1980, the City Civil Court will have jurisdiction over the matter and this Court cannot exercise the jurisdiction even concurrently in view of the deletion of Section 300 of the Indian Succession Act by the said City Civil Court (Amendment) Act, 1980, so far as City Civil Court is concerned.

32. The decision in Sailendra Nath Sarkar"s case (Supra) does not lend, any support to the petitioner as in that case admittedly the place of abode and the assets were outside the original side jurisdiction of the High Court or City Civil Court but within the limits of the State of West Bengal. I am in respectful agreement with the view taken by this Court in Sailendra Sarkar"s case.

33. In the present case the provision of Clause 34 of the Letters Patent, in my view have been affected by the said City Civil Court (Amendment) Act, 1980 so far as the jurisdiction of this Court is concerned. It is also the effect of the said City Civil Court (Amendment) Act that by reason of deletion of Section 300 of the Indian Succession Act, this Court has lost the concurrent jurisdiction, which is vested in this Court by the provision of Section 300 of the Indian Succession Act.

This Court records with appreciation the useful assistance rendered by Mr. P. K. Roy who has assisted this Court as the *amicus curiae*:

34. I agree with the interpretation given by Mr. P. K. Roy as to Clause 34 of the Letters Patent that in respect of the Will bequeathing the property which is situated outside the limits of the State then this Court under Clause 34 of the Letters Patent cannot entertain the application for grant of probate.

35. I also agree with Mr. Roy in his interpretation that the High Court can entertain the application for probate of the Will bequeathing the property which is situated within the limits of the State or "Bengal Division" as contemplated in the Letters Patent, but outside the jurisdiction of City Civil Court after the said Amendment Act.

In the result, I hold that in view of the aforesaid, this Court cannot exercise jurisdiction over this testamentary proceedings under Clause 34 of the Letters Patent. This application for grant of probate is not maintainable and this petition should be taken off the file. The petitioner may make an application for grant of probate in respect of the said Will, dated 22nd February, 1978 before the appropriate Court.

This application, therefore, is dismissed as it is not maintainable. There will be no Order as to cost.