

**(1975) 03 CAL CK 0023**

**Calcutta High Court**

**Case No:** Civil Rule No. 4597 (W) of 1970

Braja Mohan Sarkar and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision:** March 14, 1975

**Acts Referred:**

- Succession Act, 1925 - Section 227
- West Bengal Estates Acquisition Act, 1953 - Section 44(2a)

**Citation:** 79 CWN 1035

**Hon'ble Judges:** B.C. Roy, J

**Bench:** Single Bench

**Advocate:** Bimal Kumar Dutta, for the Appellant; Sipra Sircar for the State., for the Respondent

**Final Decision:** Dismissed

### **Judgement**

B.C. Roy, J.

This application is directed against order No. 3 dated June 24, 1970 passed by P.C. Paul, Assistant Settlement Officer, in Objection Case No. 17 of 1970. The petitioners' case is that they obtained this land on the basis of a will executed by their grand-father Ram Chandra Mondal on 12th Jaistha, 1359 B.S. in respect of the lands comprised in Khatians Nos. 91 and 93 in Mouza Kachna, P.S. Kaliganj, District West Dinajpur. After the demise of their grand-father, Ram Chandra Mondal, on Sravana 30, 1360 B.S. the petitioners duly obtained letters of Administration of the said will from the court of the District Judge, West Dinajpur, on 4th June, 1956. The petitioners have been all along in possession of the said lands and their names have been duly recorded in the R.S. record of rights which were finally published

2. In 1970 a proceeding u/s 44 (2a) of the West Bengal Estates Acquisition Act being Objection Case No. 17 of 1970 was started suo mutu by the Revenue Officer, Raiganj, asking the petitioners to produce documents in support of the correctness

of the record of rights in respect of the said lands. The petitioners appeared through their lawyer and produced the said will as well as the Letters of Administration granted by the Court in support of their contentions that they obtained the said land from their grand-father on the basis of the said will. The Revenue Officer on June 24, 1970 passed an order holding that the said will was made to deprive the State of its due share in the surplus lands and as such the records of rights requires modification and revision u/s 44 (2a) of the Act and directed for deleting the names of Brojamohan Sarkar and Khargeswar Sarkar from the Khatians Nos. 91 and 93 and recording the names of Rajmohan and Harimohan Sarkar, sons of Ram Chandra Mondal in column No. 13 of the said Khatians each having 8 annas share.

3. It is against this order, this Rule was obtained. Mr. Dutt appearing on behalf of the petitioner contends firstly that in a proceeding u/s 44 (2a) the Revenue Officer is not legally competent to decide the genuineness or validity of the will. He submits that the will has been executed in 1359 B.S. that is, long before the enforcement of the West Bengal Estates Acquisition Act and letters of administration of the same was also duly obtained and as such it is not within the province of the Revenue Officer to question the validity of the said will.

4. Mr. Dutt has next contended that the Revenue Officer is not also competent to decide the motive or intention of the testator in executing the said will and as such the order of the Revenue Officer is wholly without jurisdiction and is liable to be quashed and set aside.

5. With regard to the first contention of Mr. Dutt, Learned Counsel for the petitioner, it appears that the will was executed long before the enforcement of the West Bengal Estates Acquisition Act and probate of the said will was duly obtained from court. So the question of genuineness of the said will cannot be questioned in a summary proceeding u/s 44 (2a). In a proceeding u/s 44 (2a) the only question to be decided is whether the person in whose name the property was recorded was in possession at the date of vesting or not and in deciding that question the Revenue Officer can incidentally go into the question of title, rather the basis of such possession, but it is not within his jurisdiction to decide the question of title or the validity of a particular document directly in a proceeding u/s 44 (2a) of the Act. In this case, it is evident that the names of the petitioner have been recorded on the basis of those documents of title as well as on the basis of their possession at the date of vesting. There is no material on record to show otherwise. The order of the Revenue Officer therefore is not justified in this background. With regard to the second contention of Mr. Dutt, it appears that the Revenue Officer approached the case from a wrong standpoint that is to decide the motive behind the execution of the will. In my considered opinion in a proceeding u/s 44 (2a) the Revenue Officer is not entitled to go into the question of the motive behind the particular document. The Revenue Officer is to determine on the question of possession of the lands by the persons whose names have been recorded in the finally published record of

rights. So the order of the Revenue Officer, is, in my opinion, not a proper order in accordance with law. u/s 227 of Indian Succession Act probate of a will granted established the will from the death of the testator and validates all intermediate acts of the executor as such. The testator Ram Chandra Mondal admittedly died on 30th Sravana 1360 B.S. and therefore the disputed property vested in the legatees petitioners from the date of the testator i.e. before the enforcement of the Estates Acquisition Act. So the disputed property cannot be treated in anyway as the property of the testator.

For the reasons as stated above, this application succeeds and the Rule is made absolute. There will be no order as to costs.