

(2011) 09 CAL CK 0012

Calcutta High Court

Case No: C.O. No. 2102 of 2011

Smt. Aparajita @ Aparajita Luthra
and Others

APPELLANT

Vs

Smt. Poonam Luthra and Others

RESPONDENT

Date of Decision: Sept. 19, 2011

Acts Referred:

- Succession Act, 1925 - Section 247, 263

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Sabyasachi Bhattacharjee and Chandradoy Roy, for the Appellant; J.R. Chatterjee, For the opposite party Nos. 1 and 2, Debasish Roy and Ambar Nath Banerjee and Anirban Kar, For the opposite party Nos. 3 and 5, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Defendant No. 1(a), 1(b), 3 & 4 and is directed against the Order No. 67 dated February 3, 2011 passed by the learned Additional District Judge, 10th Court, Alipore in O.S. No. 12 of 2008 arising out of Revocation Case No. 112 of 1998.

2. One Shaligram Luthra, since deceased, was the absolute owner of the property in suit and during his lifetime, he bequeathed or his movable and immovable property to his wife, Smt. Shanti Devi Luthra and appointed her as the sole executrix. Then Shaligram Luthra died on October 16, 1984 and after his death his wife, Smt. Shanti Devi Luthra applied for probate in respect of the properties left by her husband before the District Delegate, Alipore. Subsequently, she obtained a probate in respect of the Will left by her husband.

3. Late Shaligram Luthra had three sons, namely, Aswini, Vinod and Deepak, now all deceased, and one daughter, namely, Smt. Sunita Paul / opposite party No. 3 herein.

Deepak Luthra predeceased Shaligram Luthra.

4. Then, in May 1993, Smt. Shanti Devi executed a deed of family settlement and appointed the Petitioner Nos. 3 & 4 as joint trustees in respect of her properties. Thereafter, in 1998, the Petitioners got the notice of the institution of the revocation of the probate filed by the opposite party No. s 1 & 2 u/s 263 of the Indian Succession Act filed before the District Judge at Alipore and the said application for revocation had been converted into the Revocation Case No. 112 of 1998. In that revocation case, the present Petitioners and the opposite party No. s 3 to 6 were arrayed as Defendants. Since, the matter is being contested the said revocation case had been converted into the O.S. No. 12 of 2008 and it is now pending before the learned Additional District Judge, 10th Court, Alipore.

5. The Petitioners entered an appearance in the said suit and they are contesting the said suit by filing a joint written statement controverting the material allegations raised in the plaint.

6. The opposite party No. s 4 & 5 are also contesting the said suit by filing a joint written statement and the opposite party No. 3 has also filed a separate written statement wherein he has supported the case of the opposite party No. s 1 & 2. Ultimately, on the prayer of the opposite party No. 3, she was transposed from the category of Defendant to the category of Plaintiff.

7. The opposite party No. 3 has contended in his written statement that the said will was a forged and fabricated one. The Petitioners filed an application for appointment of a handwriting expert for examining the signature of late Shaligram Luthra with five other admitted signatures appearing on different documents and that application was rejected by the impugned order. Being aggrieved, this application has been preferred.

8. Now, the question is whether the impugned order should be sustained.

9. Upon hearing the submission of the learned Counsel for the parties and on going through the materials on record, I find that the opposite party No. 3 filed her written statement supporting the case of the opposite party No. s 1 & 2 but at the same time, she filed an application u/s 247 of the Indian Succession Act contending that the said will was a forged and fabricated one. This was done when the opposite party No. 3 was in the category of Defendant. But after transposition, she supported the plaint case and as such, it is doubtful whether her contention that the said will was a forged and fabricated one, could be entertained. However, I find that the opposite party No. 3 is not pressing for appointment of a handwriting expert but it was sought for by the Defendant No. s 1(a), 1(b), 3 & 4. So, the person who contended that the deed of will is a forced one, is not pressing the same.

10. It may be noted herein that the present revocation matter is pending for non-citation of certain interested parties and in the O.S. No. 12 of 2008, it has to be

decided whether the citation was proper or not. If it is held ultimately that the citation is not proper and then only the probate of the will may be cancelled. At that time, there is a scope for consideration of the issue whether the will purported to have been executed by the Shaligram Luthra is forged or fabricated or not. Before reaching that stage, there is no scope in the present matter in dispute to consider whether the will in question is a forged and fabricated one.

11. As indicated earlier, the revocation is only on the ground of non-citation of the close relations and they have filed the application for revocation of the probate already granted.

12. The learned Advocate for the opposite party No. s 3 & 5 has referred to the decisions of [Pravin Kumar Kothari, deceased Dipti Bavishi Vs. Ashoke Kothari, Dinabandhu Roy Brajaraj Saha, Firm Vs. Sarala Sundari Dassya](#), ; [Southern Bank Ltd. Vs. Kesardeo Ganeriwalla and Others](#), and [Mrs. Nalini Navin Bhagwati and others Vs. Chandravadan M. Mehta](#), and submits that the citation upon the close relations of the deceased is a must to know what prayer has been sought for by the applicants of the probate case and to decide whether they would contest or give consent to the said application for probate. The paragraph No. 46 of the decision of [Southern Bank Ltd. Vs. Kesardeo Ganeriwalla and Others](#), appearing at page 390 clearly lays down that if citation is not issued to the near relations, the probate already granted, should be revoked. Section 263 illustration of the Indian Succession Act lays down that non-citation is a good ground for revocation of probate. Therefore, in the matter of revocation of the probate, the main question to be decided whether citation was effected upon the close relations or not and if the applicants for revocation succeed then and then the question of appointment of a handwriting expert arises for comparison of the signature of Shilgram Luthra on the disputed will with other admitted signatures.

13. Under the circumstances, I am of the view that the learned Trial Judge has rightly rejected the prayer for appointment a handwriting expert in the proceeding for revocation of probate.

14. So, there is no scope of interference with the impugned order. Accordingly, the application fails to succeed.

15. It is, therefore, dismissed.

16. Considering the circumstances, there will be no order as to costs.

17. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.