
(2009) 02 CAL CK 0050
In the Calcutta High Court
Case No : C.O. No. 2946 of 2008

Achin Bandhu Guha

APPELLANT

Vs

Ashim Bandhu Guha and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2009) 02 CAL CK 0050

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Probal Kr. Mukherjee and Sukanta Chakraborty, for the Appellant; Aniruddha Chatterjee and Syed Nurul Arefin for Opposite Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—This application under Article 227 of the Constitution of India is directed against an order being No. 96 dated 16th June, 2008 passed by the learned Additional District Judge, 10th Court at Alipore in Revocation Case No. 113 of 1995 which is being heard analogously with the Revocation Case No. 78 of 1997. By the impugned order the petitioner's prayer for recall of its witness as per Order 18 Rule 17 of the CPC was rejected by the learned Trial Judge on contest. The learned Trial Judge held that the questions which the petitioner wants to answer by recalling its witness either have already been answered or are matters of record or are beyond his pleadings. The propriety of such an order is under challenge in this application before this Court.

2. Let me now consider as to how far the learned Trial Judge was justified in rejecting the petitioner's application for recall of its witness as per Order 18 Rule 17 of the CPC in the facts of the instant case.

3. Two revocation proceedings were initiated at the instance of the petitioner. In one of such proceedings the petitioner applied for revocation of the probate

granted in favour of the executor of the will left by his father. In the other proceeding the petitioner applied for revocation of the letter of administration granted in favour of one of his brother in respect of a will left by his mother. The grounds on which such revocation was prayed for, are almost similar in the both the aforesaid applications.

4. The petitioner claimed that citation was never issued upon the petitioner in any of the proceedings either for grant of probate or for grant of letter of administration. The petitioner further claimed that the notice and/or summons of the proceedings for grant of probate and/or letter of administration was never served upon him. The petitioner further claimed that neither his father nor his mother executed any will. The will of the father which was probated was, in fact, created by forgery. Similarly he stated that the will of his mother in respect of which the letter of administration was granted, was also manufactured by forgery. The petitioner further claimed that those were all unnatural wills as there was no justifiable reason for disinheriting the petitioner from their respective properties.

5. These are the grounds on which revocation was sought for by the petitioner. In both the applications for revocation of the grant, the petitioner stated that after coming to know about the said probate proceeding and/or the letter of administration proceeding from one of his friends, the petitioner collected the details of the said proceeding by causing necessary searches in the records relating to those probate and/or letter of administration proceeding and thereafter those applications for revocation were filed by the petitioner. The opposite party Nos. 1 and 3 herein are contesting the said proceedings by filing their respective objections by denying the petitioner's allegation regarding non-service of citation and/or summons upon the petitioner. The allegation regarding creation of the will by forgery was also disputed by both of them. In addition to the aforesaid denial, the opposite party No. 3 in her objection specifically stated that the petitioner herein not only appeared in those proceedings through his appointed Advocate Sri Tapan Kumar Nath but also gave his consent for grant of probate and/or letter of administration by filing petitions through his said learned Advocate in those proceedings.

6. In these background trial of the revocation proceeding commenced. The evidence of the petitioner in his examination-in-chief has already been concluded. While he was being cross-examined by the opposite party No. 3, the petitioner filed an application under Order 18 Rule 17 of the CPC inter alia seeking permission from the Court for recall of its witness for giving further evidence with regard to the following questions:

1. How are you related with Late Amiya Bandhu Guha?
2. What is the difference of age in between yourself and the said Amiya Bandhu Guha?
3. Is it a fact that you reposed confidence on the said Amiya Bandhu Guha?

4. Is it a fact that you signed papers sometimes in blank sheet and/or forms as per direction of the said Amiya Bandhu Guha?

5. Please see the vokatnana and tell my Judge as to whether for giving consent to the probate proceeding you signed this Vokatnama.

6. Whether Amiya Bandhu Guha, while asking you to sign on this Vokatnama intimated to you that this Vokatnama will be used in the probate proceeding of the last will of your parents.

7. The petitioner's said application was rejected by the learned Trial Judge for the reasons as aforesaid. Hence, this revisional application was filed by the petitioner.

7. Heard Mr. Probal Mukherjee, learned Advocate, appearing for the petitioner and Mr. Aniruddha Chatterjee, learned Advocate, appearing for the opposite party No. 3.

8. Let me now consider the merit of the instant revisional application in the facts recorded hereinabove.

9. I have carefully gone through the pleadings of the respective parties as well as the evidence of the petitioner recorded so far in those proceedings. Let me now discuss as to whether the petitioner can be allowed to recall his witness for answering any of the questions as suggested by him in his said application or not.

Re: Question No. 1.

10. How are you related with Late Amiya Bandhu Guha?

11. On perusal of the cross-examination of the petitioner recorded on 5th February, 1997 in Revocation Case No. 113 of 1995, this Court finds that the petitioner stated therein that Amiya Bandhu Guha who was appointed as executor by his father in his will was the cousin brother of the petitioner.

12. Thus, this Court finds that the said question has already been answered by the petitioner and the answer is on record.

Re: Question No. 2

13. What is the difference of age in between yourself and the said Amiya Bandhu Guha?

14. This Court is still at a loss to understand the relevancy of the said question in the facts of the instant case. Be that as it may the age of Amiya Bandhu Guha is recorded in his deposition which he gave in connection with the probate proceeding relating to the will of the petitioner's father. The age of the petitioner is also recorded in his deposition which he gave in connection with the revocation proceeding. As such, the difference of age between the petitioner and Amiya Bandhu Guha is a matter of calculation which can conveniently be made with reference to the deposition of the petitioner and Amiya Bandhu Guha as

aforesaid. As such, the petitioner cannot be allowed to recall his witness for bringing the said fact on record.

Question Nos. 3

15. Is it a fact that you reposed confidence on the said Amiya Bandhu Guha?

AND

Question No. 4

16. Is it a fact that you signed papers sometimes in blank sheet and/or forms as per direction of the said Amiya Bandhu Guha?

17. Since these two questions are related to each other let me discuss the relevancy of these two questions in the facts of the instant case. In fact, the petitioner never claimed in his application for revocation that he ever reposed confidence on Amiya Bandhu Guha though he stated in his evidence that his relationship with Amiya Bandhu Guha was cordial. The petitioner, however, did not make out any case suggesting that he signed some papers sometimes in blank sheet and/or forms as per the direction of Amiya Bandhu Guha. The petitioner never pleaded that the blank sheets were signed by him as per the direction of Amiya Bandhu Guha and the same were subsequently converted into consent petitions. He further stated in his cross-examination recorded on 3rd August, 2000 that it is not a fact that he filed consent application through his lawyer for issuing probate to the will executed by his mother or that he gave consent for Ashim Bandhu Guha being appointed as administrator.

18. The petitioner admitted in his application for revocation that he inspected the records relating to the probate/letter of administration proceeding before filing those applications for revocation. As such, the existence of those consent petitions on record must have been noticed by him earlier, but in spite thereof he did not prefer to deal with the same appropriately at the right time, though filing of such consent petitions was referred to by the opposite party No. 3 in her objection to the revocation application.

19. In the context of the aforesaid pleading and/or his evidence, this Court has no hesitation to hold that the petitioner cannot be permitted to give further evidence by way of recall to nullify the effect of his cross-examination.

20. Furthermore since there is no foundation of his claim to the effect that he ever signed any blank paper on the request of Amiya Bandhu Guha and those were utilized in the said proceedings by converting those papers into a petition for consent, in his pleadings, this Court cannot permit the petitioner to recall his witness for giving answer to the said question as it is settled law of the land that no amount of evidence beyond pleading can be considered in the suit and/or any proceeding.

Question No. 5

21. Please see the vokalatnama and tell my Judge as to whether for giving consent to the probate proceeding you signed this Vokatnama.

AND

Question No. 6

22. Whether Amiya Bandhu Guha, while asking you to sign on this Vokatnama intimated to you that this Vokatnama will be used in the probate proceeding of the last will of your parents?

23. In my view, the petitioner cannot be permitted to recall his witness for giving answer to the aforesaid questions in the context of his evidence in chief wherein he is stated as follows:

(One Vokatnama is shown to the deponent) This signature said to have been written by one Achin Bandhu Guha on the Vokatnama now shown to me is not mine and I did not put such a signature. The disputed Vokatnama is marked "X" for identification. I did not put any signature under this document now marked Ext. "P" for identification.

I do not know any lawyer with the name Tapan Kr. Nath.

24. Since the petitioner himself has denied execution of the said Vokatnama, the above questions which the petitioner wants to put to his witness by recall are absolutely redundant.

25. Under such circumstances, this Court does not find any illegality in the order impugned by which the petitioner's prayer for recall of its witness was rejected by the learned Trial Judge.

26. The Revisional Application, thus, stands rejected.

27. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.