

(2010) 05 CAL CK 0046
In the Calcutta High Court
Case No : PLA. No. 105 of 2007

In Re: In the Goods of Sisir Kumar Mitra (DEC)

Date of Decision : 19-05-2010

Acts Referred:

Succession Act, 1925 — Section 263

Citation : AIR 2011 Cal 27 : 114 CWN 1072

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Judgement

Kalyan Jyoti Sengupta, J.—This is an application for revocation of grant of a testamentary document said to have been executed on January 21, 1981 by one Sisir Kumar Mitra (since deceased). By this document, Pradip Kumar Ghosh was appointed an executor of the will and he obtained the grant as such.

2. This application has been taken out by one Dipak Mitra who claims to be the nephew of the said deceased on the ground that the said deceased, on May 3, 2006 executed the subsequent will revoking all other testamentary documents executed earlier. There are other grounds for revocation, but a discovery of the later will after grant is obtained is good enough to examine this aspect.

3. In paragraph 6 of this application, it has been specifically stated that the deceased had finally made a will and testament as late as on May 3, 2006. In response to the aforesaid statement, the propounder of the first will who is the grantee of the probate of this Court, has stated in paragraph 6 as follows:

In particular I deny and dispute that the will dated May 3, 2006 ought to get precedence over any other will and testament as alleged in the said paragraph.

4. Thus, it is clear that the factual existence of the later will has not been denied and disputed. Then again, in paragraph 9 the propounder of the first will has stated as follows:

I say that in 2006, the said deceased Sisir Kumar Mitra was 86 years old and became almost infirm and insane and unable to move without the help of others and taking advantage of the same, the Petitioner has procured the signature of

the testator. I say that the signature, if any put by the testator, has been put without proper understanding about the contents of the same.

5. The sum and substance of the said allegation is that the later will was not validly and lawfully executed by the said testator.

6. In the application of this nature, according to me ordinarily factual existence of a will good enough to entertain this action. Therefore, I am to see whether the document on the strength of which the present action has been brought can be said to be a will or not?

7. In order to become a valid will, prima facie the Court has to examine whether such document has been signed apparently by the testator or not? Next, whether there has been at least two attesting witnesses? A xerox copy of the testamentary instrument dated May 3, 2006 has been annexed and I have seen prima facie that two signatures of the two attesting witnesses are there and a signature of a person, namely Sisir Kumar Mitra is there. It is also there that this is the last will and/or codicil and he revokes all other earlier wills. It is also said in paragraph 1 of the said document that this will have effect after May 3, 2006.

8. Therefore, all the ingredients of the will are to be found. I hasten to add that this finding is only for the purpose of examining whether there has been a last will and testament apparently in order to make an application for revocation of the grant. Going by the dates, admittedly Mr. Chatterjee's client's production of the document is a later one. Mr. Chatterjee submits that in view of the aforesaid admitted position, this Court has no option but to revoke the grant of the same as the ground squarely falls within Section 263 of the Indian Succession Act, 1925. Learned Counsel for the propounder of the first will submits that this Court will not automatically revoke as there has been a serious challenge against the later will and indeed his client was not aware of the existence of this document. Therefore, he calls upon me to examine the genuineness of the will before I pass any order of revocation.

9. Having regard to the submissions made by both the learned Counsel, I think that in an extraordinary situation while entertaining the application for revocation of the will, the Court can examine the genuineness of the will and this can only be done when it is found on the face of the document that the signature is nothing but a forged and suspicious one and in that situation the Court may refuse to revoke. Section 263 of the Indian Succession Act has given the discretionary power to the Court and the Court is not obliged to revoke whenever any approach is made. The words "may be" in the section are pointer to support my aforesaid views.

10. The Court will also not examine the genuineness of the will even when a strong case is made out against the later will when a comprehensive proceeding in connection with the will has already been brought before a competent Court. Here admittedly Mr. Chatterjee's client has already made an application for grant of probate in respect of the later will on citation being issued to the propounder

of the first will. I have been informed that the propounder of the first will has already lodged caveat and has filed affidavit in support thereof to contest the grant in respect of the later will. The said proceeding has assumed a contentious character before the appropriate Court. When the appropriate Court is in seisin over the matter, therefore, it would not be proper for me to express any opinion as to the genuineness of the will or regarding the attestation and execution of the same also. All points are kept open.

11. Under these circumstances, I am unable to accept the submission of the learned Counsel for the Respondent propounder. Hence, I revoke the grant. I direct the propounder to surrender the grant forthwith before the Registrar in Insolvency of this Court who will keep the same in his custody.

12. However, this application for grant made in this Court will remain pending till the application for grant of the later will is disposed of. In the event for any reason the grant in respect of the later will is refused by the competent Court, then the propounder in this case will be entitled to proceed for obtaining a fresh grant. I think that the disputes between the parties should be settled with relation to the testamentary succession as early as possible. Therefore, I request the learned District Judge, 24-Parganas (North) that all possible steps should be taken for early disposal of the matter. It is the desire of this Court that testamentary suit bearing Misc. Case No. 324 of 2007 (Probate) be disposed of as early as possible, preferably within a period of six months from the date of production of the copy of this order.

13. The application is thus disposed of. There will be no order as to costs.

The Registrar in Insolvency and all parties concerned are to act on a photostat signed copy of this order on the usual undertakings.