
(2010) 06 GAU CK 0018
In the Gauhati High Court
Case No : CRP No. 217 of 2009

Meera Bora

APPELLANT

Vs

Hiranath and Others

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14, Order 6 Rule 15, 99
Succession Act, 1925 — Section 280, 281, 295

Citation : (2011) 1 GLT 69

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : K.K. Mahanta, N.K. Kalita and A. Barman, for the Appellant; None, for the Respondent

Judgement

Amitava Roy, J.—In challenge is the order dated 28.04.2009 passed by the learned District Judge, Kamrup, Guwahati, in Probate Case No. 344/2007, rejecting the application filed by the present Petitioner for Letters of Administration on the ground that the same being not verified by her, was not in compliance of the mandatory requirements of Section 280 of the Indian Succession Act, 1925 (hereafter referred to as the Act).

2. I have heard Mr. K.K. Mahanta, Senior Advocate assisted by Mr. N.K. Kalita and Mr. A. Barman, Advocates for the Petitioner. In spite of service of notice on the Respondents, none has entered appearance to resist the prayer made herein.

3. The Petitioner, though not the executor of the Will involved, initially filed a petition for probate under the aforementioned legal provision and thereafter sought amendment in the averments to condition the same to facilitate issuance of a Letter of Administration instead. The Will and testament involved is one executed on 10.08.2006 by Kamal Chandra Nath (since deceased), who was the maternal uncle of the Petitioner and the brother of the opposite party/ Respondents. According to the Petitioner, though the bequest was in her favour, she was not appointed as the executor of the Will. Seeking probate she instituted

Probate Case No. 3447/2007 u/s 280 of the Act.

Though the Respondent Nos. 1 & 2 filed their counter in the said proceeding and the Respondent No. 3 also entered appearance therein, they did not contest the same as such. The petition for probate was in order being in compliance of the requirements outlined in the relevant provisions of the Act. On an application for amendment of the petition for probate suitably for issuance of a Letter of Administration, the same was allowed by the learned Court below. Consequently, an amended petition was filed on 08.04.2009. The application for amendment discloses that thereby the Petitioner sought to delete and substitute words and sentences in the original petition for probate and also to replace the prayer made therein by one for Letter of Administration. Admittedly, the verification accompanying the amended application for Letter of Administration was not verified by the Petitioner or by her learned Counsel. By the impugned order dated 28.04.2009 this application was dismissed by the learned Court below on the ground that it did not satisfy the requirement of verification as obligated by Section 280 of the Act.

4. Mr. Mahanta has persuasively argued that the requirement of verification as comprehended u/s 280 of the Act is not mandatory but directory in nature and that therefore, on that count alone the impugned order is liable to be set aside. According to him, as the petition for probate had been duly verified by the Petitioner, it was not imperatively essential for her to sign the verification of the application for Letter of Administration anew. He has sought to endorse this plea by contending that as meanwhile the evidence in the proceedings has been recorded and that the same was pending at the stage of arguments, the rejection of the application for Letter of Administration was visibly illegal and unsustainable in law. The learned Senior Counsel has argued without prejudice to the above that even assuming that the requirement of signing of the verification of the application for Letter of Administration was imperative, the learned Court below ought to have treated such omission to be a curable and permitted the Petitioner to sign the same at a later point of time. Mr. Mahanta has insisted that as the signing of the verification of pleadings is a procedural requirement, the learned Court below was apparently in error in adopting a rigid outlook therefore and in dismissing the application for Letter of Administration on that count. In support of his contention the learned Senior Counsel has placed reliance on the decisions in Kailash Singh Vs. Hiralal Dey, Nand Kishore Rai and Another Vs. Mst. Bhagi Kuer and Others, , Ramasinha Rajput v. Murtibai AIR 1923 Nag 41 and Karam Singh Vs. Ram Rachhpal Singh and Others,

5. I have extended my thoughtful consideration to the submissions made. The starting factual premise is obvious and clear to the effect that though the original petition for probate had been signed and verified in accordance with the requirements of Sections 280 and 281 of the Act, the amended application for Letter of Administration was neither signed by the Petitioner nor by her Advocate. The same was not attested by one of the witnesses to the Will as well.

Section 280 enjoins that a petition for the probate or Letter of Administration shall in all cases be subscribed by the Petitioner and his/her pleader, if any, and shall be verified by the Petitioner in the following manner:

I (A.B.). the Petitioner in the above declare that what is stated therein is true to the best of my information and belief.

Section 281 prescribes that where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable) in the manner or to the effect as composed therein. An apparent difference in language in the texts of Sections 280 and 281 is discernible. Whereas, in a petition for probate the verification has to be essentially signed by the Petitioner and his pleader, if any, and has also to be accompanied by a verification by at least one of the witnesses of the Will, if procurable, the emphasis is clearly on the verification of the petition for probate and/or to the Letter of Administration by the Petitioner and his/her pleader, if any. This appears to be the common and uncompromising edict of these two legal provisions.

Under Section 295 of the Act, contentious proceedings including those for probate or Letter of Administration, partake the character of regular suit which are to be conducted in accordance with the provisions of the Code of Civil Procedure, 1908 (as amended). The Petitioner for probate or Letter of Administration, as the case may be, then shall be the Plaintiff and the person who has appeared to oppose the grant shall be the Defendant.

6. In the above perspective, the provisions of the CPC (hereafter for short referred to as the Code), so far as the issue pertaining to the verification of the pleadings, would be relevant.

Order 6, Rule 14 requires that every pleading shall be signed by the party and his pleader (if any). The proviso in relaxing the said rigour underlines that where the party pleading is, by reason of absence or for other good cause; unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Order 6, Rule 15, which deals with, verification of pleadings obligates that every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. This provision further enjoins that the person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies to his own knowledge and information received and believed to be true. The verification as well, has to be signed by the person making it and is to contain the date as well, on which it is made as well as the place where the verification has signed. By an amendment inserted by the CPC (Amendment) Act, 1999, the person comprehended as above is additionally required to file an affidavit in support of the pleadings.

7. A combined reading of Order 6, Rules 14 and 15 thus make it unambiguously

clear that not only the pleadings in a suit or a proceeding akin thereto has to be essentially signed by the party and his pleader, if any, the same has to be indispensably verified by him or her Advocate or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case following the amendment as mentioned hereinabove. An affidavit also has to be filed by him/her in support of his/her pleadings. The requirement of an affidavit in support of the pleadings by the verifier thereof in addition, in the opinion of this Court, only underscores the inflexible and binding nature thereof so as to furnish the factual foundation of a party's case before a Court of law that he or she expects to be taken cognizance of and to be permitted to be proved by adducing evidence, oral and documentary.

8. The proceeding before this Court in *Kailash Singh v. Hiralal Dey* (supra) was one under the Assam Urban Areas Rent Control Act, 1972. In that case, the Defendant in the suit, inter alia, took a plea that the plaint had not been signed and verified in accordance with law and without correct particulars of the premises. This Court noticed from the narration in the impugned judgment and order that the Defendant in course of his deposition did not challenge the signature of the Plaintiff in the plaint as well as in the Vakalatnama and that inspite thereof the said forum erred in law in personally verifying the signatures in the said documents. It is, in this context, that this Court referring to Section 99 of the Code, while observing that an omission in the matter of signing and verification of the plaint would amount to an error, defect or irregularity, held the same to be a mere defect in the procedure not affecting the jurisdiction of the Court. In coming to this conclusion His Lordship placed reliance on the decision of the Punjab and Haryana High Court in *Smt. Mukhtiar Kaur Vs. Smt. Ghulab Kaur*,

In this reported case, as the facts would reveal, the plaint and the verification had not been signed by the Plaintiff but by his Lawyer and further the Plaintiff as a witness supported the averments made in the plaint. The situations as obtained in both these decisions are visibly different from the one in the case in hand. Here, admittedly, the amended application for Letter of Administration has not been verified by the Petitioner or by her Advocate. Though, Mr. Mahanta in course of the arguments has apprised this Court that even before the petition for amendment had been filed, the evidence of the Petitioner and her witnesses had been recorded vis-a-vis the petition for probate, no such statement to that effect has been made in the civil revision petition. I prefer to leave this aspect at that for the present.

9. In *Karam Singh* (supra) as well, the amended plaint though, had not been signed by the Plaintiff or by his Mukhtiar, was so done by his pleader. It is in that perspective that the disapproval of the Court of the rejection of the plaint in absence of signature of the party concerned on and verification, has to be viewed.

10. The decision rendered in *Nand Kishore Raj and Anr. v. Mst. Bhagi Kuer and Ors.* (supra), relates dominantly to Section 281 of the Act, which mandates

attestation by a witness of a Will in addition to the verification of the petition for probate by the applicant. Referring to the language of Section 281 as it existed at that point of time which clearly indicated that the verification by the attesting witness was subject to his/her availability, His Lordship of the Allahabad High Court held the said requirement to be directory in nature so much so that non compliance thereof did not entail rejection of the petition.

11. The decision rendered in Ramasinha Rajput (supra), is also relatable to the issue of verification of a petition for grant of probate vis-a-vis an attesting witness as comprehended u/s 281 of the Act and, therefore, is of not much relevance for the issue herein.

12. Having regard to the unambiguous language applied by the Legislature in Section 280 of the Act when read in conjunction with Order 6, Rules 14 and 15 (as amended) by the CPC (Amendment) 1999, with all humility I express my disagreement with the view rendered in Kailash Singh v. Hiralal Dey (supra). Having regard to the state of law as on date, the requirement of verification of the pleading, as obligated by the above provisions, is neither a purely procedural essentiality nor any deficiency thereof would amount to a curable irregularity in a proceeding of the kind as envisaged thereby. Where a statement of fact would form the foundation of the case of a litigating party, it is imperative that the same ought to be verified strictly in accordance with the rigour of the law relatable thereto. In absence of such verification, such a statement of fact cannot be taken cognizance of by a Court of law, so much so that any volume of evidence in support thereof would be wholly irrelevant and insignificant, as it, in view of the fundamental law of pleading and proof establish would not have any probative value. Having regard to the eventualities mentioned in Section 99 of the Code, which are clearly defined, the plea that an omission in the matter of signature and verification of pleadings in a civil proceeding would amount to mere defect or irregularity therein, does not commend for acceptance. It is noticeable that the Legislature in providing such a relaxation, had consciously limited the same to cases where such eventualities do not affect the merit of the case or the jurisdiction of the Court. If a statement of fact is not verified in accordance with law, in the opinion of this Court, there is no factual foundation of the case of the party in default and, therefore, this understandably would have a determinative bearing on the merit of his case. If a Court of law takes note of a statement of fact not being verified and decides the lis, the decision would be vitiated by a fundamental error affecting the merits of the case and, therefore, has to be construed to be clearly beyond the ambit of Section 99 of the Code. A law of procedure, though hand maid of justice, cannot be exalted to a status to be subversive of the law invocable as the means for justice. Justice has to be essentially administered in accordance with law.

13. In the above view of the matter, even assuming that as on date the evidence of the Petitioner as well as her witnesses is on record, the same is vis-a-vis for the petition for probate and not one for the Letter of Administration. It is not the

case of Petitioner that she had urged before the learned Court below to treat the petition for probate to be one for application for Letter of Administration. She consciously chose to have the petition for probate amended by integrating deletions and substitutions. Though the amendments were allowed, she admittedly, failed to verify the same as required u/s 280 of the Act. The amended application cannot be construed to be a wholesome substitute of the petition for probate to exempt the compliance of Section 280. The evidence on record, in the opinion of this Court is, therefore, of no significance to tilt the balance in favour of the Petitioner, her omission as above, notwithstanding.

On a totality of the considerations hereinabove, this Court therefore, finds itself in agreement, with the decision taken by the learned Court below. The petition, therefore, is rejected. This notwithstanding, it would be open for the Petitioner to approach the learned Court below to permit her either to furnish the omissions/ deficiency in the verification accompanying her amended application for Letter of Administration or to treat her petition for probate as one for the same relief. If such a prayer is made, the learned Court below would record its decision thereon in accordance with law. No costs.