
(2003) 04 CAL CK 0057
In the Calcutta High Court
Case No : Civil Order No. 269 of 2003

Smt. Ratna Chakraborty

APPELLANT

Vs

Smt. Rekha Chakraborty

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Succession Act, 1925 — Section 288, 295

Citation : AIR 2004 Cal 24 : 108 CWN 860

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Amarentra Nath Ray, for the Appellant; Jyotirmoy Bhattacharya, Mrityunjay Bandopadhyay and Aniruddha Chatterjee, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 227 of the Constitution of India challenging an order dated October 5, 2002 passed by Shri Ratan Kumar Das, learned Civil Judge (Junior Division) at Bongaon, District : North 24 Parganas, acting as the District Delegate, in Misc. Case No. 84 of 2002.

2. Kiran Shankar Chakraborty executed a document stated to be his last will and testament on June 26, 2001 corresponding to Ashar 11. 1408 B.S. A photocopy of the said document is annexed as Annexure "A" to this application. It is stated in the said Will that the testator married Shrimati Rekha Chakraborty (see Choudhury) on August 12, 1998, but she all along inflicted mental and physical tortures on him; because of such behaviour of his wife, he started residing in a rented accommodation at Cossipur; the wife lodged complaint with the police against him and the police, at the instance of his wife, insulted him; the wife instituted a proceeding u/s 125 of the Code of Criminal Procedure against him and obtained an interim order from the learned Magistrate; he instituted a suit for divorce in the Court of the learned District Judge, District : North 24 Parganas being Matrimonial Suit No. 964 of 1999; that the wife of the testator was not looking after him, but his spinster sister was looking after him; he bequeathed all his movable and immovable properties, including his service benefits, in favour of

his said sister and named, and appointed her as the executor of the said Will.

3. The testator, Kiran Shankar Chakraborty, expired on October 27, 2001 and the said executor applied for grant of probate of the said Will on July 25, 2002 in the Court of the learned District Delegate at Bongaon, District : North 24 Parganas, which was registered as Misc. Case No. 84 of 2002.

4. The propounder moved an application for injunction in connection with the said proceeding seeking to restrain the wife of the testator either from withdrawing the service benefits of the testator from his employer or from alienating any immovable properties or the testator. The learned District Delegate initially passed an ad interim order of injunction in favour of the propounder.

5. The wife of the testator, the opposite party in this revisional application, entered appearance in the said Misc. Case No. 84 of 2002 and expressed her desire to contest the claim. She, also, contested the prayer for temporary injunction.

6. The learned District Delegate by his order dated October 5, 2002 rejected the said application for injunction on contest and the interim order of injunction, which was granted earlier, was vacated. The learned District Delegate in the order impugned held that the opposite party was the wife of the testator and the Will was an unprobated one. It was observed that it was very much unfortunate that the testator bequeathed all his assets in favour of her spinster sister, who has been a school teacher, although the testator had two unemployed brothers and his wife; therefore, such disposition has been very much unfortunate.

7. The learned District Delegate, peculiarly enough, after rejecting the application for injunction, granted liberty to the wife of the testator to dispose of all the movable and immovable properties of her deceased-husband in respect of her appropriate share in accordance with law. The learned District Delegate, therefore, fixed November 26, 2002 for further steps in the case.

8. Being aggrieved by and dissatisfied with the said order, the propounder has come up with this application under Article 227 of the Constitution of India.

9. In my view the order impugned is wholly without jurisdiction and based on wrong application of the principles of law.

10. It appears that the attention of the learned District Delegate has not been drawn about the mode of proof of the Will. The mode is like any other document. Nevertheless, the propounder of the Will has to remove completely the suspicious circumstances before it is accepted. The propounder is to prove that the testator signed the Will out of his own free will while he was in a sound mind and the testator understood the nature and effect of dispositions. The propounder is, further, to prove that the testator signed the document in presence of two attesting witnesses, who signed in presence of each other, that is the Will conforms the requirements of Section 63 of the Evidence Act. The

Supreme Court of India in the case of Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others, observed as under :

"The Court, of probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate Court."

11. Part IX, Chapter 1, of the Indian Succession Act, (Act XXXIX of 1925) deals with grant of probate and letters of administration.

12. u/s 265 of the said Act the High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases within such local limits as it may prescribe. The persons so appointed shall be called "District Delegates".

13. Section 286 of the said Act speaks about the jurisdiction of such District Delegates; a District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that the probate or letters of administration ought not to be granted in his Court. The word "contention" has been explained in the proviso to the said Section 286; contentions means the appearance of any one in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

14. u/s 287 the learned District Delegate is to transmit statements to the learned District Judge in doubtful cases. It provides that in every case in which there is no contention, but it appears to the learned District Delegate doubtful whether the probate or letter of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the learned District Judge, who may direct the learned District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the learned District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

15. u/s 288 the procedure has been prescribed where there is a contention or the learned District Delegate thinks probate or letters of administration should be refused in his Court. In contentious proceedings and doubtful cases, the learned District Delegate should return the petition along with all the documents that might have been filed before him to the person by whom the application was made in order that the same may be presented to the learned District Judge. In the alternative, however, the learned District Delegate, for the purpose of justice, may impound the papers and send them to the learned District Judge concerned.

16. Section 295 of the said Act prescribes the procedure in contentious cases before the learned District Judge. The said section lays down the proceedings, once they became contentious, take the form of a regular suit as nearly as may be and the procedure under the CPC applies to those proceedings.

17. Thus, when the wife of the testator appeared and thereby expressed her intention to contest the proceeding, the proceeding ceases to be non-contentious. The learned District Delegate is appointed to act for the learned District Judge to grant probate and letters of administration in non-contentious cases. The learned District Delegate has been asked not to grant probate or letters of administration in contentious cases. In contentious proceeding and in doubtful case the learned District Delegate must either return the petition to the pro-pounder or refer the case to the learned District Judge, but he has neither the power to grant probate in contentious case nor the power to reject the application for probate. If there is contest in the Court of the learned District Delegate, the proceeding is without jurisdiction.

18. Accordingly, the order impugned passed by the learned District Delegate is without jurisdiction and is, therefore, set aside. The learned District Delegate is directed to return the application and the documents, if any, to the propounder to enable her to take steps in the Court of the learned District Judge.

19. The learned Advocate for the petitioner submits that, taking advantage of the order impugned, the opposite party has withdrawn the service benefits of the testator from his employer. Since the order has been set aside as it was passed without jurisdiction, the opposite party is directed to deposit the entire amount collected by her in the Court of the learned District Judge, District : North 24 Parganas, who will pass appropriate directions in the matter.

20. By way of abundant of caution I make it clear that I have not gone into the merits of the claims and the counter-claims of the Parties and all points are kept open to be decided by the learned District Judge on merits and in accordance with law,

21. The revisional application is, thus, allowed.

22. There will be no order as to costs.

23. The learned Registrar General of this Court is requested to communicate this direction to the learned District Delegate concerned forthwith for securing compliance.