

(2005) 11 CAL CK 0028

In the Calcutta High Court

Case No : G.A. No. 4393 of 2004 and P.L.A. No. 119 of 1993

Suniti Bala Paul alias Bina Pani Paul

APPELLANT

Vs

Arunangshu Bhusan Paul

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Succession Act, 1925 — Section 263

Citation : (2006) 1 CALLT 573 : 110 CWN 419

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, J.—This is an application taken out by one Arunangshu Bhusan Paul for revocation of grant of probate by this Hon"ble Court dated 2nd August, 1993. This application has been taken out sometimes in the month of September, 2004. So, apparently this application is taken out after nearly eleven years. Ordinarily this kind of application should be dismissed on the ground of delay. Indeed this application has to be dismissed for the following facts and reasons as stated hereinafter:

2. The deceased testatrix is the mother of the applicant. By the will another brother of the applicant was appointed executor. He obtained probate of the Will. From the records I find that probate was granted without any contest, as consent was endorsed on the application of grant of probate.

3. It is the case of the petitioner that no citation either special or general was issued either, upon any of the heirs and/or legal representatives. It is pertinent to record that other heirs and legal representatives have not come forward to reopen the issue of grant of probate which was given by this Court in 1993. Still the petitioner takes other claimant's case. I am of the view that the petitioner cannot take step because the question of locus standi is there in order to maintain an application for revocation of grant. Therefore, each and every

applicant has to approach to establish its locus standi. The petitioner has to establish the Zocus standi of its own way and I find that the petitioner has Zocus standi to apply for revocation of the grant. It is said in the petition that signature of endorsement of consent on the petition is not of the petitioner. It was a forged one. True upon comparison of the signature in the petition for grant of probate with the signature of the consent endorsed in the original application for grant of probate I find apparently both differ from each other. On that ground alone this probate could have been revoked as the fraud and forgery, if practised in Court, has to be eliminated and resultant wrong has to be set at right. But this proposition of law is not an inflexible rule in all the cases, applicability thereof depends upon each and every fact concerning conduct of the party complaining. Will it be applicable when it is found that the applicant has resorted to act of trickery and had taken benefit in this act of forgery.

4. All along I find as rightly, pointed out by Mr. Mitra appearing for the propounder, the petitioner was aware of the grant of probate of the Will and even existence of the Will and has taken benefit in terms of the Will. This fact is also substantiated without any shadow of doubt by the fact without any shadow of doubt by the fact that after grant of probate in the year 2001 the executor/propounder took out an application for appropriate interlocutory relief against the applicant. That application was opposed by filing an affidavit. In the affidavit-in-opposition prior knowledge of existence of the will and grant of probate of the Will is apparent. Nowhere it has been said that signature and endorsing consent is a forged one. Even if it is true still he has accepted this forged signature of his own. Therefore story made out today by the applicant after eleven years is simply unacceptable. I am of the view that the petitioner consciously and wilfully has abandoned and/or relinquished his right of citation being served upon him. Mr. Swapan Kr. Mallick submits that a person cannot waive such right and even if there be a waiver, this cannot be applied as against the provision of law. It is the duty of the Court to issue citations upon the persons who are entitled to be cited.

5. I think this law would have been applied. But I am unable to do so because of the petitioner's prior and subsequent knowledge of the factum of grant of the probate of the Will and further existence of grant and it is stated on oath.

6. When this affidavit-in-opposition was confronted, Mr. Mallick upon instruction submits that his client had neither instructed to write any such letter nor instructed to prepare and file any affidavit. He further submits his client is prepared to file supplementary affidavit to that effect. I refuse to accept such submission simply because a litigant can not be allowed to shift his stand conveniently. Section 263 of Indian Succession Act provides revocation of grant is made on "just cause". Presumption of one of just cause is non service of citation. I therefore do not find there exist any cause far less just cause to revoke grant in this case. I am of the view that this application is totally misconceived and is an afterthought and after having taken benefit of everything in terms of the Will this application is taken out to unsettle every settled thing.

Therefore, this application fails and is hereby dismissed with costs assessed by the taxing department.

All parties are to act on a xerox signed copy of this dictated order on the usual undertaking.