

IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY AND INTESTATE JURISDICTION
ORIGINAL SIDE

IA NO.GA 2 OF 2022
IN
TS 10 OF 2021
IN THE GOODS OF:
JATINDRA NATH BISWAS (DEC.)
AND
SRIRUPA BISWAS
VS
SUPRATIK BISWAS

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 25th April, 2023.

Appearance:-
Mr.Rahul Karmakar, Adv.
Mr. Asif Sohail Tarafdar, Adv.
For plaintiff
Mr. A.Boral, Adv.
Mr. I.B.Jha, Adv.
For defendant

THE COURT:- This is an application for amendment of the plaint in a testamentary suit.

The plaintiff being the executor had filed an application for grant of probate of the last Will and Testament dated 23rd March, 2014 said to have been left behind by the abovenamed deceased.

The defendant has objected to the grant by filing an affidavit in support of the caveat lodged pursuant to the service of the citation.

The proposed amendments are shown in red ink in a copy of the plaint being Annexure-A to this application.

In the second page, the proposed amendments shown in red ink are inconsequential. In a contentious probate proceedings the plaint being an application for grant of probate or letters of administration is in the form of an

application as initially filed and no amendment as shown is necessary. Without the amendments shown in the second page the testamentary suit can be tried out.

In paragraph 1 instead of 'your petitioner' the plaintiff wants to include the word 'the plaintiff herein'. Similarly, in other places in the body of the plaint the word petitioner and respondent are proposed to be substituted by the word plaintiff or defendant. These are also not required for the purpose of adjudication of the suit.

In the proposed amendment as shown in paragraph 2A and 2B the plaintiff although, says to be elucidating the testator's mental health, the relationship between the testator and the objector has in fact attempted to lead evidence which is also not required to be incorporated for either proving the Will or to lay evidence as to the mental health of the testator or his relationship with the objector even if the proposed amendment is considered in the light of the principle no evidence can be laid without pleading. Same is with the proposed amendment shown in paragraphs 3A, 3B and 3C. That apart and in any event, the proposed amendments are coming after the objector has filed his affidavit in support of the caveator expressing his grounds of objection. On a plain reading of the proposed amendment, it is apparent that a major portion thereof is intended to plug the loopholes after considering the objection. The pleadings as it stand are sufficient enough to lead evidence as to the mental capacity of the deceased and the reason as to why the testator eliminated one of his sons.

The intention of the plaintiff cannot be, therefore, outrightly said to be bona fide.

The executor in the instant case is by chance the widow of the testator and the objector is the eldest son. In this fact scenario the executor is in a position to

know all details as to the testator. Had it been an outsider-executor, the information forming the basis of the proposed amendment would not have been available with the executor and as such would not have figured in the plaint.

The plaintiff cites judgment, reported in AIR 2003 Cal 148 (Ajit Kumar Saha Vs. Ashit Kumar Saha), in support of her contention that the proposed amendment should be allowed.

There is no dispute as to the parameters to be considered while adjudicating an amendment application but allowing or disallowing the same is depended on the nature of the amendments proposed. The judgment in Ajit Kumar Saha (supra) cited by the plaintiff is not applicable to the facts of the instant case, particularly when the gamut of the proposed amendments are considered on a plain reading thereof. One should also not lose track of the fact that a contentious probate proceeding when is directed to be heard as a testamentary suit, the plaint is required to be treated as far as practicable as a plaint while the affidavit of the objector as far as a written statement and not as a plaint or a written statement because of its origin. Even after taking note of the fact that any amendment made to the plaint is ultimately required to be proved yet considering the nature of the proposed amendment as discussed above, I am not inclined to allow the amendments.

The proposed amendments are, therefore, disallowed.

The application being GA 2 of 2022 is, accordingly, dismissed.

(ARINDAM MUKHERJEE, J.)