

OD-1

IA No: GA 3 of 2021

In PLA/195/2018

IN THE HIGH COURT AT CALCUTTA

Testamentary & Intestate Jurisdiction

ORIGINAL SIDE

IN THE GOODS OF:

DR. PRASANTA BANERJI, DECEASED

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Date: 27th March, 2023.

Appearance

Mr. Jayanta Mitra, Sr. Adv.
Mr. Rupak Ghosh, Adv.
Mr. Rahul Auddy, Adv.
Mr. Aditya Gupta, Adv.
...for the applicant

Mr. Sarvapriya Mukherjee, Adv.
Mr. Biswajit Kumar, Adv.
Mr. Debayan Sen, Adv.
... for the caveatrix

Mr. Sounak Sengupta, Adv.
Mr. Gopal Pahari, Adv.
Mrs. Piyali Kuloi, Adv.
...for the Executor

ORDER

The applicant Ms. Isha Banerji, daughter of Late Pratip Banerji had filed the instant application praying for allowing the applicant to be as co-petitioner in the probate application being PLA No. 195 of 2018.

Smt. Nabanita Ghosal and Ashis Ghosal have jointly filed an application for grant of probate of the last Will and Testament dated 11th May, 2018 and the Codicil dated 14th may, 2018 of the testator, Dr. Prasanta Banerji. The applicant is the granddaughter of the testator.

Dr. Prasanta Banerji since deceased during his life time had executed his last Will and Testament on 11th May, 2018, wherein the testator had appointed the applicant herein as well as his daughter Smt. Nabanita Ghosal and his son in law Ashis Ghosal (husband of Nabanita Ghosal) as joint executor of his last Will.

Dr. Prasanta Banerji died on 17th May, 2018 leaving behind his son Dr. Pratip Banerji and daughter Nabanita Ghosal as his legal heirs. After the death of Dr. Prasanta Banerji, the two of the executors namely Nabanita Ghosal and Ashis Ghosal have filed an application before this Court for grant of probate. The son of the testator has filed his caveat and affidavit-in-support of his caveat in the probate proceeding. The son of the testator died on 18th January, 2021 leaving behind his wife and three daughters including the applicant herein.

After the death of father, the applicant herein has filed the instant application to be joined as co-petitioner in the probate application as she is also one of the executrix of the Will.

Mr. Jayanta Mitra, learned Senior Advocate representing the applicant submits that the applicant is one of the executrix of the last Will and Testament of the testator and she has the right to be a co-petitioner in the probate application.

Mr. Mitra referred Section 224 and Section 225 of the Indian Succession Act, 1925 and submits that as per the said provision also the applicant has the right to join as co-petitioner in the said probate application.

Mr. Mitra submits that in the probate application also the petitioners have admitted that the applicant is one of the executrix of the last Will and Testament but at the time of filing of the probate application, the applicant had not contacted the petitioners and thus the petitioners have filed the probate application.

Mr. Sarvapriya Mukharjee, learned Advocate representing Mrs. Rinku Banerji, wife of Late Dr. Pratip Banerji submits that 38B, Elgin Road, Kolkata - 700 020 being the address of the petitioners of probate application and 10/3/1B, Lala Lajpat Rai Sarani (previously known as Elgin Road) are situated just adjacent to each other and thus the averments made by the petitioners in probate application that the applicant cannot be contacted by the petitioner is not believable and the said story is incorrect.

Mr. Mukherjee submits that after the death of father, the petitioners being the aunt and uncle of the applicant have managed to influence and mislead the applicant to file the present application to support the alleged Will.

Mr. Mukherjee submits that the applicant has not filed the present application out of her own free Will and consent and submits that before disposing of the instant application the applicant may be examine in person before this Court.

Mr. Mukherjee submits that the alleged Will is alleged to have been executed on 11th May, 2018 and the alleged Codicil is alleged to have been executed on 14th May, 2018 and the testator died on 17th May, 2018 just 6 days after the alleged Will was executed and 3 days after the alleged Codicil.

Mr. Mukherjee submits that the testator was admitted in hospital on 10th May, 2018 and he died at the hospital and thus it is not possible for the person to execute a Will at the hospital and from the medical prescription, it is established that the testator was not physically fit and was not in a fit state of mind.

Mr. Mukherjee submits that during the life time, when the father was physically fit and was in fit state of mind had executed his last Will and Testament on 20th February, 2015, by appointing him as an executor of his last Will and Testament.

Mr. Sounak Sengupta, learned Advocate representing the petitioners in probate application submits that he has no-objection, if, the applicant is joined as co-petitioner as the applicant is also one of the executor of the Will.

Section 224 and 225 of the Indian Succession Act, 1925 reads as follows:

“224. Grant of probate to several executors simultaneously or at different times.—When several executors are appointed, probate may be granted to them all simultaneously or at different times.

225. Separate probate of codicil discovered after grant of probate.—(1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will.

(2) If different executors are appointed by the codicil, the probate of the Will shall be revoked, and a new probate granted of the Will and the codicil together.”

Paragraph 3 of the Will dated 11th May 2018 reads as follows :

“3. I hereby appoint my granddaughter Isha Banerji, my daughter Nabanita Ghosal and her husband Asish Ghosal as the joint executors of this my Will as well as my entire estate. In case of any differences of opinion between the joint executors in any matter the decision of the majority shall prevail.”

As regards the objection raised by the respondent, this Court finds that the respondent will get an opportunity to cross-examine the witnesses as well as the applicant at the time of hearing of the probate application. The applicant herself has filed the present application by affirming an affidavit before the Oath Commissioner of this Court and thus the submission made by the

Counsel for the respondent for examination of the applicant in person before passing final order is not sustainable.

Admittedly in the Will, the testator has appointed the applicant as one of the executor. In the probate application, the petitioner have admitted that the applicant is one of the executor of the Will but at the time of filing of the application, they could not contact the applicant and thus they have filed the application for grant of probate. As per Section 224 of the Succession Act, 1925, when several executors are appointed, probate may be granted to them all simultaneously or at a different time. Merely by allowing the applicant to join as petitioner in the application for grant of probate, does not mean that the applicant will be granted probate. The applicant has to prove the Will as per the provisions enshrined under law and the respondent will get an opportunity to test the Will by examining witnesses.

In view of the above prayers (a) to (d) of the Masters Summons are allowed.

G.A. 3 of 2021 is thus **disposed of**.

(KRISHNA RAO, J.)