



2023:CHC-OS:3679

IN THE HIGH COURT AT CALCUTTA
(Testamentary & Intestate Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

GA No. 1 of 2024

In

PLA No. 164 of 2022

IN THE GOODS OF :

AVA SAHA (DECEASED)

Mr. Soumyen Dutta

Ms. Dolon Dasgupta

.....for the petitioner

Mr. Sourajit Dasgupta

Ms. Amrita Panja Moulick

Ms. Shivangi Agarwal

.....for the Executor

Hearing Concluded On : 07.01.2025

Judgment on : 15.01.2025

**Krishna Rao, J.:**

1. This is an application filed by the petitioner namely, Shaibal Saha for revocation of probate granted by this Court dated 22nd June, 2023 of the last Will and Testament dated 14th January, 2020 in an application filed by the executor namely, Surajit Kumar Saha being PLA No. 164 of 2022.
2. The petitioner is claiming that the petitioner is the son of the deceased brother of the late husband of the testatrix. The testatrix inherited the property left behind by her husband who died intestate on 4th September, 1990. The son of the testatrix, namely, Bitansa Saha also died on 2nd July, 1997. The testatrix died on 13th May, 2021 leaving behind the legal heirs of her husband side.
3. Mr. Soumyen Dutta, Learned Advocate representing the petitioner submits that the petitioner being the son of the deceased brother of the late husband of the testatrix has got caveatable interest over the property but no notice of the probate proceeding is served upon the petitioner. He submits that the executor had the knowledge about the address of the legal heirs of the husband of the testatrix but the petitioner knowingly has pleaded that he could not trace out the address of the legal heirs of the husband of the testatrix.
4. Mr. Dutta submits that executor had initiated a proceeding under Section 144(2) of the Code of Criminal Procedure against the petitioner wherein the address of the petitioner has correctly mentioned and in



the said application, the executor has also mentioned that the petitioner is the nephew of the testatrix.

5. Mr. Dutta also relied upon the certificate issued by the Sub-Divisional Officer regarding the legal heirs of the testatrix wherein the name of the petitioner is also appearing. He submits that in the month of June, 2019, the testatrix was suffering from serious illness and doctors advised her to undergo implantation of a pacemaker and accordingly, the petitioner has taken the testatrix to hospital wherein she was admitted, the petitioner has signed in the documents at the hospital as nephew of her husband.
6. He submits that the testatrix died on 13th May, 2021 in the midst of complete Covid lockdown. The petitioner has obtained necessary vehicle permission from the concern authorities for conducting last ritual of the testatrix. The petitioner did the last ritual of the testatrix. The petitioner superannuated from his service on 31st August, 2023 and from December, 2023 started residing at the residential house of the deceased more frequently. He submits that on 23rd December, 2023, the executor along with some persons visited the residence of the testatrix and started threatening the petitioner and his family for vacating the premises and accordingly, the petitioner has made complaint to Baguiati Police Station. The Officer-in-Charge of the said police station called both the parties and the brother of the executor has informed that the testatrix has left behind her Will in favour of the executor but the executor has not disclosed any document to the



petitioner. Immediately, the petitioner has lodged two caveats before the lower and higher division of District Court at Barasat. He submits that the petitioner has initiated a proceeding under Section 144(2) of the Cr.P.C. in the month of January, 2024 but in the said proceeding, no PLA number was disclosed and when the petitioner came to know about the details of PLA, the petitioner has applied for certified copy of the same on 27th February, 2024.

7. Mr. Dutta submits that after obtaining certified copy, the petitioner found that the signature of the deceased in the alleged Will is not genuine and the same does not bear the signature of the testatrix.
8. Mr. Dutta in support of his submissions relied upon the judgment in the case of ***In Re: Ganesh Prasad (Deceased) dated 21st June, 2023*** reported in ***MANU/WB/1260/2023*** and submitted that the grant was made without citing the petitioner who ought to have been cited and no notice was served to the petitioner.
9. Mr. Sourajit Dasgupta, Learned Advocate representing the executor submits that the petitioner has contended that there are other legal heirs of the deceased husband of the testatrix but other than the petitioner, no one has come forward to challenge the grant of probate.
10. Mr. Dasgupta submits that as per provisions of the Indian Succession Act, 1925, Chapter XXXV of the Original Side Rules of this Court and pursuant to the orders passed by this Court, all legal compliances were



completed and after being satisfied, this Court has granted probate of the last Will and Testament of the testatrix to the executor.

- 11.** Mr. Dasgupta submits that in terms of the order passed by this Court citation was issued, necessary publications were also made in the English Daily News Paper, namely, “The Telegraph” and in the Bengali Daily News Paper, namely, “Anandabazar Patrika” but inspite of publication of notice, none has come forward to object for grant of probate. He submits that there is no irregularity in the process in which the probate was granted to the executor.
- 12.** Mr. Dasgupta submits that there is no question of fraud, undue influence or coercion. He submits that there is no suspicious circumstances exist relating to the execution of the Will. He submits that none of the allegations constitute any ground for revocation of the grant of probate of the last Will and Testament dated 14th January, 2020. He submits that there is no requirement of registering a Will.
- 13.** Mr. Dasgupta submits that publications were made with respect to the probate proceeding but the petitioner chose not to appear in the matter by filing caveat or affidavit in support of caveat and has not stated any reasons as to why even after publication of notice in the Daily News Papers, the petitioner has not filed caveat by objecting for grant of probate.
- 14.** Mr. Dasgupta submits that absence or non-service of special citation to the persons, who ought to be cited is no doubt a good ground for



revocation, but however, it is not an absolute right and other circumstances has to be taken into consideration before looking into the said aspect. Mr. Dasgupta in support of his submissions relied upon the judgment in the case of **J. Malarvizhi Vs. D. Shankar** reported in **2010 SCC Online Mad 381**.

15. Mr. Dasgupta submits that a person is not made a party to a proceeding cannot always and necessarily be understood as a proceeding which is defective in substance. He submits that when the person interested to enter a caveat has been notified either by a special notice through court or by way of general publication, then it cannot be said that the proceedings to obtain the grant were defective in substance. He submits that the allegation of fraud or the averment as to the so-called untrue allegations must be real and should not stand as bare imputations. In support of his submissions, he has relied upon the judgment in the case of **G. Shanmugham Chetti and Another vs. Chinnammal** reported in **1977 SCC OnLine Mad 145**.

16. Section 263 of the Indian Succession Act, 1925 reads as follows:

“263. Revocation or annulment for just cause.—*The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation.—*Just cause shall be deemed to exist where—*

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing



*from the Court something material to the case;
or*

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

17. In paragraph 5 of the probate application, executor has described the legal heirs of the deceased testatrix as follows:

5. *That the deceased at the time of her death was survived by the following persons as her only legal heirs as lineal descendants of her father, Surath Kumar Saha, since deceased, who expired on 12.05.1972 and her mother Renuka Saha, since deceased, also expired on 11.10.1991 and details of their surviving heirs are stated hereunder:-*

Name	Address	Relation
1. Surajit Kumar Saha	I-1302, VIP Enclave, 3 rd Floor, VIP Road, Rajarhat Gopalpur Municipality, P.O. Deshbandhu Nagar, District North 24 Parganas, Kolkata – 700059	Brother/Executor
2. Jhumur Sikdar, wife of Amal Kumar Sikdar	Shivmandir Saradpally, Medical More, 31, National Road, Kadamtala, Ranidanga, District – Darjeeling, Pin – 734011	Married Sister



3. Subrata Kumar Saha	15, Basanta Bose Road, P.S. – Kalighat, Kolkata - 700026	Brother
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18. In paragraph 4 of the probate application, the executor has stated that
“Your petitioner, inspite of his best efforts, could not trace out any legal heir of her husband, on whom the said bequeathed property would have devolved had she died intestate as per the provisions of Hindu Succession Act, 1956 and hence citation is required to be issued as per law.”

19. The executor has filed an application before the Learned Court of Sub Divisional Executive Magistrate at Barasat under Section 144(2) of the Code of Criminal Procedure against the petitioner, in the said application, the executor has mentioned the address of the executor. In the said application at para 3, the executor has given the description of the petitioner as follows:

“3. That the O.P. is the nephew of the Ava Saha he is trying to encroach the Petitioner’s property on several occasions and he trying to entering with the peaceful possession of the Petitioners and on many occasions the Petitioner requested the O.P. not to do such type of illegal activities. But they did not stop their illegal activities. The O.P. also trying to occupying the whole property by illegality.”

20. The petitioner has disclosed medical certificates issued by Ramakrishna Mission Seva Partishthan dated 4th July, 2019 wherein, in the form, the name and phone number of the petitioner is



mentioned. The petitioner has also disclosed several documents wherein the petitioner has applied for permission from the concern authorities during lock down for the purpose of performing last rituals of the testatrix. From the documents, it also reveals that while applying necessary permit during Covid period, the petitioner has also applied for pass for the executor and in the all documents, the address of the petitioner is recorded.

- 21.** The petitioner has also disclosed documents obtained from the Sub-Divisional Officer showing the petitioner is one of the legal heirs of the husband of the deceased. In the wedlock between Rohini Kanta Saha and Kusum Kamini Saha, one daughter and two sons were born, namely, Sumati Bala Saha, Tarakeswar Saha and Bilwa Ranjan Saha.
- 22.** Sumati Bala Saha at the time of her death left behind her husband namely, Sarat Lal Saha, one son Santosh Kumar Saha and four daughters namely, Smt. Urmila Saha, Ms. Purnima Saha, Smt. Malati Saha and Smt. Pranati Saha. Santosh Kumar Saha at the time of his death left behind his wife Smt. Ava Saha (2) (not the deceased herein) and two sons. Smt. Pranati Saha at the time of her death left behind her husband Shri Bhaja Gopal Saha and son.
- 23.** Tarakeswar Saha at the time of his death left behind his three daughters and one son namely, Smt. Sikha Saha, Smt. Shila Saha, Smt. Sanchita Dey and Shri Shaibal Saha, the petitioner herein.



- 24.** Bilwa Ranjan Saha at the time of his death left behind his wife Smt. Ava Saha (the testatrix herein) and his son Bitansa Saha. Bitansa Saha died on 2nd July, 1997 left behind his mother Smt. Ava Saha (the testatrix herein). The testatrix Ava Saha died on 13th May, 2021.
- 25.** It is not denied by the executor that the testatrix died leaving behind no Class-I heirs but all the Class-II heirs from the side of the husband of the testatrix.
- 26.** The executor in his application for grant of probate admitted that the testatrix died leaving behind legal heirs of her husband side but only paper publication were made and no notices were served upon the legal heirs of the testatrix. The averment made by the executor in the probate application that “*inspite of his best efforts, could not trace out any legal heirs of her husband*” is not correct so far as the address of the petitioner is concern, the petitioner has disclosed several documents which established that the petitioner is one of the legal heir of the testatrix from the side of her husband and the executor has the knowledge of the address of the petitioner herein.
- 27.** Mr. Dasgupta relied upon the judgment in the case of **J. Malarvizhi (supra)** and **G. Shanmugham Chetti (supra)** but the said judgments are distinguishable from the facts and circumstances of the present case. In the said case, the Hon’ble Court held that if the non-cited party had knowledge of grant of Letters of Administration or if he or she is not prejudicially affected, thereby the grant need not to be revoked. In



the present case, it is the case of the petitioner that the petitioner had no knowledge about the probate proceeding but only when the petitioner has made complaint to the police authority and when police called the parties to the police station, the petitioner came to know about the probate and accordingly, has taken appropriate steps. The petitioner in the present application challenged the genuineness of the Will and also taken a specific plea that the signature of the testatrix is not of the testatrix and other grounds.

28. Considering the facts and circumstances of the above, this Court finds that the executor has obtained probate of the Will by concealing from the Court that the petitioner has made his best efforts but could not trace out any legal heirs of the husband of the testatrix and without citing the parties who ought to have been cited.

29. In view of the above, the order of grant of probate dated 22nd June, 2023 passed in PLA No. 164 of 2022 (In the Goods of: Ava Saha (Deceased)) is recalled. Probate, if any, issued to the executor in terms of the order dated 22nd June, 2023 shall be surrendered within a week from date. PLA No. 164 of 2022 is restored in its original file.

30. G.A. No. 1 of 2024 is thus **allowed**.

(Krishna Rao, J.)