

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

IA GA 1 of 2019
(Old No. GA 1698 of 2019)
PLA 320 of 2018

In The Goods Of :
Samir Gupta (Dec.)

Mr. Dhruba Ghosh, Sr. Adv.

Mr. Kaushik Mandal

Mr. Soumyajit Ghosh

Ms. Rita Mukherjee

Ms. Priyanka Das

.....For the applicant.

Mr. Sakya Sen, Sr. Adv.

Mr. Asif Hussain

Mr. Dhiraj Kumar Gupta

Mr. Swarup Saha

.....For the respondent.

Hearing Concluded On : 26.07.2023

Judgment on : 16.08.2023

Krishna Rao, J.: -

1. The petitioner Smt. Meena Gupta Das had filed the present application being GA 1 of 2019 (Old No. GA 1698 of 2019) praying for the revocation of probate granted by this Court by an order dated 15th March, 2019 and issued on 10th May , 2019 executed by Samir Gupta and allied prayers.
2. The petitioner has filed the present application on the ground that the petitioner is the widow of the deceased Samir Kumar Gooptu (Gupta) and marriage between Samir Kumar Gooptu (Gupta) and the petitioner is solemnized on 20th February, 2010, according to the Hindu rites and customs and the marriage was registered on 22nd May, 2013 under Section 16 of Special Marriage Act, 1954.
3. It is the further case of the petitioner that out of their wedlock, no child was born and her husband Samir Kumar Gooptu died on 6th July, 2018 leaving behind her as his sole legal heir. The husband of the petitioner was the owner of two immovable properties i.e. :
 - (i) CA-48, Sector-I, Salt Lake City, Kolkata – 700064 consisting of two storied building.
 - (ii) 71/C, Netaji Subhas Road, Kolkata – 700001, consisting of a partly three storied building.
4. The petitioner further contended that in the month of May, 2019 she came to know from reliable sources that one Ramji Singh who was the caretaker of one of the properties of her husband situated at 71/C, Netaji Subhas Road, Kolkata - 700 001 is claiming to be the owner of

the said property and the said Ramji Singh further claimed that the said property has been bequeathed unto him by the deceased Samir Kumar Gooptu by way of a Will. On getting the said information, the petitioner had made enquiries and came to know that Ramji Singh has obtained a probate of the Will of the deceased Samir Kumar Gooptu with respect of the property being No. 71/C, Netaji Subhas Road, Kol - 700 001.

5. On getting said information, the petitioner has applied for certified copy of all the documents in connection with PLA 320 of 2018 and after obtaining the document, the petitioner came to know that the said Ramji Singh has described the petitioner in the application being PLA 320 of 2018 as domestic helper and nurse of the family of testator, knowing fully well that the petitioner is the legally wedded wife of the deceased Samir Kumar Gooptu (Gupta). After receipt of all the documents, the petitioner has filed the present application.
6. Mr. Dhruba Ghosh, Learned Senior Advocate representing the petitioner submitted that the said Ramji Singh was well aware that the petitioner was the legally wedded wife of Samir Kumar Gooptu (Gupta) but had deliberately described her as the domestic helper and family nurse of the deceased. Shri Ramji Singh had willfully and deliberately not issued any notice to the petitioner before the grant of probate.
7. Mr. Ghosh submitted that Shri Ramji Singh had never looked after anything related to the premises No. CA-48, Salt Lake City, Sector-I,

Kolkata – 700 064, but in the alleged Will, it is mentioned that Ramji Singh was looking after the said property.

- 8.** Mr. Ghosh submitted that from the bare perusal of the alleged Will dated 2nd July, 2009, it is apparent that the alleged Will is a forged, fabricated and manufactured document and the signature appearing in the said Will is not a genuine signature and not the signature of Samir Kumar Gooptu. He further submitted that the petitioner being the wife of the deceased is well acquainted with the signature of the deceased as the petitioner has seen the signatures of Samir Kumar Gooptu on several documents.
- 9.** Mr. Ghosh submitted that the petitioner being the legally wedded wife of the deceased Samir Kumar Gooptu is the Class-I heir of her husband but the said Ramji Singh has not made her a party in the probate application and no notice was served to the petitioner and behind the back of the petitioner, the said Ramji Singh has obtained probate.
- 10.** Mr. Ghosh submitted that in the affidavit of assets filed by the said Ramji Singh, wherein he had mentioned that he had spent Rs. 5,000/- on account of the last rite rituals of the deceased but the said statement is totally false and baseless as the petitioner being the legally wedded wife has performed all rituals, rites including the funeral expenses by spending an amount of Rs. 57,000/- and infact at the time of death, Ramji Singh was not present during such rituals.

- 11.** Mr. Ghosh submitted that in the alleged Will dated 2nd July, 2009, only two properties have been described as mentioned above but the husband of the petitioner possessed another three storied building at 36B, Arabinda Sarani, Kolkata, out of which three different flats on the ground, first and second floors respectively were sold to three different purchasers in the month of May, 2014 and the signature of the husband of the petitioner is appearing in the said deeds from which signature of the husband can be proved in order to ascertain whether the signature appearing in the alleged Will dated 2nd July, 2009 is genuine or not.
- 12.** Mr. Ghosh submits that the said Ramji Singh has obtained probate from this Court suppressing the material facts and by not issuing any notice to the petitioner, though the petitioner being the Class-I heir as wife of the deceased and as such the probate granted to the said Ramji Singh is required to be revoked.
- 13.** Mr. Ghosh further submitted that the deceased Samir Kumar Gooptu during his life time had executed his last Will and Testament on 12th June, 2018 wherein the petitioner was appointed as sole executrix of the said Will, from the said Will, the genuineness of the signature of the deceased can be ascertained.
- 14.** Mr. Ghosh submits that the marriage between the petitioner and Samir Kumar Gooptu is a registered marriage and the Marriage Officer has also issued the Marriage Certificate from which it is proved that the

petitioner is the legally wedded wife of the deceased Samir Kumar Gooptu.

- 15.** Mr. Ghosh relied upon the following judgments in respect of his submissions :

i. 1996 SCC OnLine Cal 229 (Smt. Prafulla Bala Biswas -vs- Smt. Ila Das & Anr).

ii. 1968 SCC OnLine Cal 81 AIR 1969 Cal 293 (Sm. Purabi Banerjee -vs- Basudeb Mukjerjee).

ii. CAL LT 1996 (2) HC 315 (Smt. Prafulla Bala Biswas – vs- Smt. Ila Das & Anr).

- 16.** *Per contra*, Mr. Sakya Sen, Learned Senior Advocate representing Ramji Singh submitted that the petitioner is not the legally wedded wife of the deceased and in the Will, which has been probated by this Court, it is categorically mentioned that the petitioner was the domestic helper and working as a nurse.

- 17.** Mr. Sen submitted that the marriage certificate which the petitioner has relied upon and claiming to be the wife of the deceased, the said certificate was issued by the Marriage Registrar of Habra, Ashoknagar, Amdanga, Barasat police station area but the deceased all along resided at his residential premises at CA-48, 1st floor, Salt Lake City, Police Station – Bidhan Nagar, Kolkata – 700 064 and the deceased has no other residential premises.

- 18.** Mr. Sen submitted that at no point of time, the deceased had in any occasion resided at Kadamgachi within the Police Station Barasat. He

submits that the Voter Identity Card and Aadhar Card of the deceased, the address of the deceased is all along mentioned that the deceased was the resident of CA-48, 1st floor, Salt Lake City, Police Station - Bidhan Nagar and not at Kadamgachi, Barasat.

- 19.** Mr. Sen submitted that the petitioner has not produced any evidence that at any point of time, any customary marriage was solemnized between the petitioner and the deceased.
- 20.** Mr. Sen submitted that the petitioner has somehow procured the alleged marriage certificate though the petitioner is aware that no marriage was solemnized or registered between the deceased and the petitioner. He submits that the deceased had never left his residence since 2010 as he was suffering from severe ailments including knee problems for which he had become immovable and always required assistance to move around in a wheelchair. He submitted that the registered deed which the petitioner has disclosed demonstrate that the same has been executed on Commission at the residence of the deceased.
- 21.** Mr. Sen submitted that Ramji Singh had made an application to the Office of the Registrar General of Marriage, West Bengal under the Right to Information Act to ascertain as to whether the purported marriage certificate issued by the Marriage Registrar was genuine and in response to the said information, Office of the Registrar General of

Marriage has informed the petitioner that the record of marriage is not traceable.

- 22.** Mr. Sen relied upon Section 15 (f) of the Special Marriage Act, 1954 submitted that as per the said provisions, the party should have been residing within the district of the Marriage Officer for a period of not less than 30 days immediately preceding the date on which the application is made to him for registration of marriage but in the instant case, the petitioner has not shown any document that the deceased resided at the place not less than 30 days at the time of alleged registered marriage.
- 23.** Mr. Sen relied upon Section 24 (2) of the Special Marriage Act, 1954 and submitted that registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the condition is specified in clauses (a) to (e) of Section 15 of the Act.
- 24.** Mr. Sen submitted that the marriage certificate which the petitioner has relied upon is a forged one and is not in accordance with the provisions of Section 15, 18 and 24 of the Special Marriage Act, 1954.
- 25.** Mr. Sen further submitted that when Shri Ramji Singh came to know about the alleged certificate on the basis of which the petitioner is claiming as wife of the deceased Samir Kumar Gooptu, the executor has already initiated a suit before the appropriate court for declaring the alleged certificate as null and void.

- 26.** Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied upon by the Counsel for the petitioner.
- 27.** The petitioner has filed the present application for revocation of probate granted by this Court to the executor.

Section 263 of the 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.*
- (vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.*
- (viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.”*

- 28.** Admittedly the petitioner has not been cited as party and thus no citation was issued. The executor has not cited the petitioner as legal heir of the deceased on the ground that the petitioner was the domestic helper and was the nurse of family of the testator and the executor denied the petitioner as the wife of the testator.
- 29.** The petitioner has relied upon the marriage certificate issued by the Marriage Officer, Habra, Ashoknagar, Amdanga, Barasat police station dated 22nd May, 2013 wherein it is certified that the marriage between the deceased Samir Gupta and the petitioner Meena Gupta (Das) was registered on 22nd May, 2013 and the marriage is with effect from 20th February, 2010. The said marriage certificate was issued under Section 16 of Act XLIII of 1954.

Section 16 of Special Marriage Act, 1954 reads as follows :

“16. Procedure for registration.—Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Chapter the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in section 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.”

Section 15 of the Special Marriage Act, 1954 reads as follows :

“15. Registration of marriages celebrated in other forms.—Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage

solemnized under the Special Marriage Act, 1872 (III of 1872) or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:—

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.”

30. The executor by filing affidavit in opposition has challenged the marriage certificate of the petitioner on the ground that the marriage certificate relied by the petitioner is not issued in accordance with law and the said certificate is forged and fabricated.

31. The executor has applied for information under Right to Information Act to ascertain whether the marriage between the petitioner and the

testator was registered or not. The office of the Registrar has given reply to the said information that the file is not traceable but on the other hand, in response to the reply to the petitioner under the Right to Information Act, the Marriage Officer has replied as follows:

“To

S.K. PANDEY

Belur E.S.I, Hospital

Chandmari, Sapuipara

P.S. – Nischind, District- Howrah

Pin Code – 711206.

Sir,

Apropos to the subject captioned in your letter dated 08-05-2019 I would like to reply you that the Marriage Certificate SL. No. 28/13 issued on 22/05/2023 in the name of Samir Gupta and Meena Gupta @ Das issued by me is valid one and registered on the basis of required documents for registration of marriage for further query please contract with Registrar General of Marriage W.B.

Thanking you,

Yours Faithfully

Bhudev Chakraborty

Marriage Officer

For Habra, Ashoknagar, Amdanga

Barasat P.S. Area

Vill & P.O- Dogachia, Via-Rajibpur

P.S.-Ashoknagar, Dist.- (N) 24 Pgs.

Pin Code No. 743702, W.B. India.”

- 32.** The petitioner is claiming to be a legally wedded wife of the deceased and is relying upon the marriage certificate issued by the Marriage Officer under Section 16 of the Special Marriage Act. The executor is challenging the said marriage. The validity of the marriage as well as the certificate of marriage can only be decided after trial whether there was any customary marriage solemnized between the parties and the

marriage certificate issued by the Authority is in compliance with the provisions of law or the certificate is forged or fabricated one.

- 33.** As regard to filing of caveat and affidavit in support of caveat, one has to establish that he/she is having any caveatable interest over the property of the deceased. In the present executor has obtained probate of the Will of the testator without citing the petitioner as legal heir of the deceased and when the petitioner came to know about the probate has filed the present application and claiming to be the wife of the testator. In support of her claim, the petitioner is relying upon the marriage certificate issued by the competent authority under Section 16 of the Special Marriage Act, 1954.
- 34.** As on date prima facie, the petitioner is having certificate of marriage. In this introlocutory application this court cannot decide whether the certificate of marriage relied by the petitioner is genuine or not or whether the same was issued in accordance with law or not. The genuineness of the certificate can only be decided during the trial.
- 35.** The executor has also filed a suit against the petitioner challenging the marriage certificate of the petitioner and the same is pending for adjudication.
- 36.** The Court while entertaining the application for revocation of grant of probate or the letters of administration finds that there exists “just cause”. Then again existence of “just cause” will not suffice, still the Court has discretion regarding. What is the “just cause” and under

what circumstances the Court may exercise discretion it is not exhaustively provided in Section 263 of the Indian Succession Act, 1925. Existence of “just cause” is exemplified and/or illustrated in exhaustively in the said Section. I find, the revocation of grant can be made when it is found that it was done without citing the parties who ought to have been cited. It is now well settled by the civil judicial pronouncement that non-service of citation upon the person who ought to have been cited is also one of the grounds for revocation of grant of probate.

37. In a full Bench decision of the Hon’ble Supreme Court reported in **AIR 1955 SC 566** in paragraph 16, it has been observed that Section 263 of the Indian Succession Act, 1925 vests a judicial discretion in the Court to revoke or annul grant for just cause. The explanation has indicated circumstances under which the Court can come to the conclusion that the “just cause” has been made out.
38. The omission to issue citations to persons who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant of probate. But this is not an absolute right irrespective of other consideration arising from the proved facts of a case. The law has vested judicial discretion in the Court to revoke grant where the Court may have “*prima facie*” reasons to believe that it was necessary to have the Will proved afresh in the presence of interested parties.

- 39.** Taking all the aforesaid facts and circumstances together I feel there exists “just cause” as the petitioner was not given a chance to see application of probate and to contest or to give consent to the same. Moreover, there exists a marriage certificate and was not brought to the knowledge of the Court which is one of the examples of “just cause” as mentioned in Section 263 of the Act.
- 40.** Accordingly, the grant of probate to the said Will is revoked and special citation shall be served by the Learned Registrar, Insolvency once again upon the Learned Advocate on record of the petitioner to take steps in accordance with law. It is made clear in the event, no lawful step is taken by the petitioner within the time stipulated by law intending to contest the application for grant of probate, this order will stand recalled and probate granted by this Court will revive. I direct the petitioner for the time being to surrender the original probate to the Registrar, Insolvency.
- 41. IA No. GA 1 of 2019 (Old No. GA 1698 of 2019) is thus allowed. PLA 320 of 2018 is restored in its original file.**

(Krishna Rao, J.)