

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 08.10.2015
Judgment delivered on: 30.11.2015

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FAO 225/2009

MAINA DEVI

..... Appellant

Versus

RATI RAM

..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr Rahul Gupta & Mr Shekhar Gupta, Advocates.

For the Respondent: Ms Neha Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

FAO 225/2009 & CM No. 9912/2009

1 This is an appeal which is directed against the judgement dated 18.02.2009, passed by the learned Addl. District Judge, Delhi. By virtue of the said judgement, the learned ADJ, rejected the appellant's petition dated 05.04.2004, preferred under Section 263, 264 and 282 of the Indian Succession Act, 1925 (in short the 1925 Act).

1.2 The appellant via the said petition had sought cancellation of Letters of Administration granted in favour of the respondent vide judgement dated 21.04.1994.

2. The appellant, being aggrieved by the impugned judgement, passed by the learned ADJ, instituted the present appeal.

3. In order to adjudicate upon the present appeal, the following broad facts are required to be noticed:

3.1 The respondent had filed a petition under Section 276 and 278 of the

1925 Act for grant of Letters of Administration in respect of a registered Will dated 23.11.1981, executed by, one, Late Sh. Jumma Mal. The executor of the Will i.e. Sh. Jumma Mal passed away on 30.12.1984. Accordingly, upon a petition being moved; which was registered as Probate Case No. 156/1992, the concerned court, allowed the petition and granted Letters of Administration in favour of the respondent qua Will dated 23.11.1981.

3.2 Fourteen years later i.e. on 05.04.2004, as indicated above, the appellant filed a petition under Section 263, 264 and 282 of the 1925 Act, to challenge the grant of Letters of Administration in favour of the respondent.

3.3 This petition was predicated on the following grounds:

(i) That in the probate petition the respondent had failed to disclose the appellant's interest in the immovable property located at Khasra No. 256/1, in Village Ghonda, Gujran Khadar Ilaka, Shahdara, Delhi; admeasuring 427 sq. yds. The failure to disclose the appellant's half share in the aforementioned property at the time of issuance of citation, and/or notice in the probate petition, had prevented the appellant from filing her objections at the relevant point in time in the testamentary action.

(ii) Since, the respondent along with his wife had sold half portion of the aforementioned property, admeasuring 213.5 sq. yds., by executing a General Power of Attorney (GPA), Agreement to Sell, Affidavit and a Will – all of even date i.e. 01.10.1987 against a registered receipt of Rs. 11,000/-, the effective relief obtained by the respondent vis-a-vis the entire property, was secured, by playing a fraud on the court.

4. The learned ADJ, after evaluating the evidence placed on record, rejected the petition whereby, cancellation of Letters of Administration dated 21.04.1994, issued in favour of the respondent, was sought. The principal findings of the learned ADJ were as follows:

- (i) It was not disputed by the appellant that Late Sh. Jumma Mal was the owner of the subject property.
- (ii) Even as per the testimony of the husband of the appellant, namely, Sh. Hira Lal, the Will dated 23.11.1981 was executed by Late Sh. Jumma Mal in favour of the respondent's wife, one, Smt. Jai Rani, and that, the respondent had obtained the Letters of Administration in his favour by interpolating his name in the said Will.
- (iii) In a suit for mandatory injunction being: CS(OS) No. 509/1991, filed by the respondent, he had disclosed the factum of having obtained Letters of Administration vide judgement dated 21.04.1994, as far back as in 1996.
- (iv) That GPA dated 01.10.1987, executed by the respondent in favour of the appellant, was cancelled/ withdrawn, and therefore, a suit had been instituted in this court.
- (v) That the appellant's husband i.e. Sh. Hira Lal (PW4) in his cross-examination had admitted that he was not in possession of the half-portion of the aforementioned property in respect of which ownership was claimed.
- (vi) The appellant has accepted, in a sense, the genuineness of the Will dated 23.11.1981, executed by Late Sh. Jumma Mal, as their claim of ownership in half-portion of the aforementioned property is rooted in the said Will.
- (vii) That no fraud was played on the court, as alleged. Firstly as the probate court is not required to decide the issue of title to the property. Secondly, the Will was executed in favour of the respondent on 23.11.1981, whereas half portion of the aforementioned property was sold in the favour of the appellant in 1987. The sale in favour of the appellant was a subsequent fact, and therefore, there was no necessity of adverting to this fact in the probate petition.
- (viii) That there was no concealment, fraud or misrepresentation on the part

of the respondent at the time of obtaining the Letters of Administration in his favour. The respondent had examined the attesting witness of the Will dated 23.11.1981. The existence of the said Will, is not denied. It is immaterial whether the Will was executed in favour of the respondent or his wife, on account of the fact that they became owners of the aforementioned plot by virtue of the Agreement to Sell, GPA and the Will dated 23.11.1981.

5. The counsel for the appellant, Mr Gupta, has assailed finding set out in paragraph 4(vii), as also the observations made in latter part of paragraph 4(viii), which have been set out hereinabove by me, to the effect that it made no difference as to in whose name the Will dated 23.11.1981 was executed.

6. Mr Gupta has contended that the finding of the learned ADJ that no fraud was played by the respondent is contrary to the record. For this purpose, he has drawn my attention to the Will dated 23.11.1981, and the evidence of PW1 i.e., one, Sh. Sahdev, the record clerk in the Sub-Registrar-IV's office located at Seelampur, Delhi. Mr Gupta, in this behalf, also placed reliance on the extract from the "Peshi Register" which had been produced by the said witness before the court.

6.1 In so far as the Will dated 23.11.1981 was concerned, Mr Gupta drew my attention to the purported changes in the Will whereby a certain section of the Will was scored out and the name of the respondent was purportedly inserted along with that of his wife.

6.2 It was contended in this connection that the Will, in issue, had in fact been drawn up in favour of the respondent's wife, Smt. Jai Rani, whose name was scored out and, fraudulently, the name of the respondent was put in.

6.3 It was submitted that this fact is established, if one were to look at the language of the Will, which is suggestive of the fact that it sought to bequeath rights in the aforementioned property in favour of a female which

in the given circumstances could only have been Smt. Jai Rani. This argument was advanced, based on the fact that in the body of the Will the word “she” had been used instead of “he”, after the alleged interpolation of the name of the respondent in the earlier part of the Will.

6.4 The aforesaid line of argument, as indicated above, was sought to be supported by referring to the extract of the peshi register, which was, filed by PW1. It was stated that the entries in the said register would show that Will executed by Late Sh. Jumma Mal was presented by the respondent’s wife Smt. Jai Rani. Mr Gupta, thus submitted, that there was, an obvious interpolation of the Will by the respondent, and this being an act of forgery and fraud played upon the court, the letters of administration granted in favour of the respondent would, necessarily have to be cancelled.

6.5 Apart from the above, Mr Gupta also submitted that the failure on the part of the respondent to advert to the interest of the appellant in the aforementioned property, had vitiated the testamentary action, as no notice was issued to the appellant at the relevant point in time.

7. On the other hand, Ms Kapoor, who appears for the respondent, stated that the learned ADJ had returned findings of fact with regard to the delay and laches on the part of the appellant in approaching the court for cancellation of the Letters of Administration. The learned counsel further submitted that the submission made on behalf of the appellant that notice of the testamentary action ought to have been issued to the appellant was untenable as the respondent and his wife had already cancelled/ withdrawn the GPA dated 01.10.1987, issued in favour of the appellant. In other words, it was the submission of Ms Kapoor that since the respondent and his wife did not recognize the interest of the appellant, in the aforementioned property, it was not incumbent upon the respondent to mention this fact in the testamentary petition.

7.1 It was thus, submitted, that since, the appellant was, admittedly, not a legal heir of the testator Late Sh. Jumma Mal, it was not necessary in law as, held by the learned ADJ, to issue a notice to her in the testamentary action.

7.2 As regards the submission made on behalf of the appellant, with regard to fraud, having been employed by the respondent, Ms Kapoor submitted, that in the testamentary action the genuineness of Will dated 23.11.1981, was proved. The attesting witness had deposed with regard to the factum of the Will having been executed by Late Sh. Jumma Mal in his presence, and therefore, this belated action ought not to pass muster of this court.

7.3 Ms Kapoor further contended that in any event the judgement dated 21.04.1994, whereby Letters of Administration are issued in favour of the respondent, does not decide the issue of title qua the subject property. In other words, whether or not the documents [i.e. the GPA, Agreement to Sell, Affidavit and the two Wills of even date i.e. 01.10.1987], purportedly, executed by the respondents in favour of the appellant, are legally tenable, is an aspect which is subject matter of the suit i.e. CS(OS) No. 1705/2003, filed by the appellant against the respondent.

7.4 It is contended by the learned counsel that the allegation of interpolation made by the appellant is not sustainable in view of the evidence brought on record.

8. I have heard the learned counsels for the parties and perused the record. As indicated, right at the outset, the appellant is aggrieved, principally, by the findings of the learned ADJ to the effect that, firstly, no fraud was employed by the respondent in having letters of administration issued in his favour; and secondly, the aspect as to whether the Will dated 23.11.1981 was executed in favour of the respondent or his wife was not material, in view of the fact that they had become owners of the subject

property via documents such as the agreement to sell, the GPA and the aforementioned Will upon being executed in their favour by Late Sh. Jumma Mal.

9. The record clearly shows that while, the appellant's husband (PW4) accepted the fact that a Will dated 23.11.1981 was executed by Late Sh. Jumma Mal, his stance was that the said testamentary document adverted to the respondent's wife and not to the respondent. In other words, the argument put forth on behalf of the appellant is that the original Will executed by Late Sh. Jumma Mal was tampered with, at the time, when the respondent moved the concerned court for grant of letters of administration.

10. The appellant has taken this stand as the documents based on which she has secured interest in the half portion of the subject property are, purportedly, drawn up jointly in her favour by the respondent and his wife, Smt. Jai Rani. It appears to be the appellant's apprehension if the judgement dated 21.04.1994 obtained by the respondent in the testamentary action is sustained, then her interest in the subject property would be in jeopardy as the respondent could take the stand that his wife had no legal right to execute the documents dated 01.10.1987 in favour of the appellant.

11. To my mind, this apprehension of the appellant has merit and, therefore, the finding of the learned ADJ that it was "immaterial" as to whose name appeared in the original Will, was clearly erroneous. Having said so, what one is required to examine is: whether the appellant had been able to place sufficient evidence, on record, which ought to have led the trial court to reach a finding that the Will in issue, was tampered with.

12. In this behalf, the appellant placed reliance on two documents. Firstly, the Will in issue; secondly, the evidence of the record clerk and the extract of the "peshi register", which he placed before the trial court for examination.

12.1 In order to come to a conclusion one way or the other, both pieces of evidence would have to be seen together. Undoubtedly, the respondent's name has been inserted after scoring out a small portion of the Will. There is also the usage of the word "she" in the body of the Will, as against the word "he". The Will, which is a typed document, has obviously been drawn up on a manual typewriter. Such errors in documents typed by manual typewriters are quite common. Therefore, to my mind, one cannot come to the conclusion one way or the other whether or not fraudulent interpolation was carried out in the Will, solely on the basis that a certain portion of the Will was scored out, or that the body of the Will adverted to the word "she" as against "he". The question is: at what point in time was the correction made? In other words, was the correction made prior to its execution and/or registration or after both events had passed. Therefore, one would have to appreciate this aspect of the matter along with the evidence of PW1 i.e. the record clerk. The deposition of the record clerk is brief, and since, it is crucial for the purposes of the adjudicating the point in issue, I intend to extract the same.

“..... I have brought the summoned record i.e. the receipt dated 1.10.87. It was registered in the office of sub registrar on 1.1.87 in book no. IV, Vol. No. 1736 on page no. 12 vide registration no. 33601. Certified copy of the same on the judicial file is Ex. PW1/1 (Original seen and returned). I have brought the peshi register of 23.11.1981. At serial no. 74 there is an entry of receipt in the name of Jai Rani and at serial no. 75, there is a will in the name of Jai Rani. The name of the executant is Jummamal. (The witness is directed to place on record the true copies of these entries.).

XXXXX by Sh. Rati Ram, Respondent.

The receipt was executed in my presence. It was not registered in my presence and I am not aware of the contents of the documents....”

(emphasis is mine)

12.1 The aforesaid extract would show that PW1 sought to present an extract of the “peshi register”. Based on the said extract, PW1 stated that there is an entry at serial no.74, which is an entry of the receipt, evidently issued, in the name of Smt. Jai Rani i.e. the wife of the respondent, and at serial no. 75 is the entry of the Will in the name of Smt. Jai Rani, and that, the executant is Late Sh. Jumma Mal. The witness (PW1) went on to say in his cross-examination that the receipt was executed in his presence, though the documents were neither registered in his presence nor was he aware of the contents of the documents.

12.2 The relevant part of the extract of the peshi register, is set out hereinbelow for a better appreciation of the testimony of PW1. To be noted, I have set out hereinbelow only the headings of the column, as they appear in the English language:

S. No.	Date of sale	S. No. of stamp paper starting from 1 st April each year*	Value of each stamp sold with total amount in words	Name, Surname	Parentage	Caste of Tribe	Address	Name of the person who purchased the stamp paper on behalf of the actual purchaser	The purpose of the paper disclosed at the time of purchase	Thumb impression or signature of the actual purchaser or his agent.	Remarks
Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx
74	-do-			Jumma Mal	Jai Rani	Illegible	Illegible	Illegible	Illegible	Illegible	Illegible
75	-do-			-do-	-do-	Will	Illegible	Illegible	Illegible	Illegible	Illegible

12.3 On the face of it, the extract is not an extract which would give one information as to the documents which were registered or their contents. Furthermore, PW1 in his cross-examinations says, quite clearly, he was unaware of the contents of the documents.

12.4 This apart, paragraph 3, 4 and 5 of the judgement dated 21.04.1994, would show that the record keeper of the office of the sub-registrar was

examined by the respondent, including the attesting witness, one, Sh. Y.L. Sachdeva. The testimony of these witnesses would show that not only Late Sh. Jumma Mal had affixed his thumb impression on the Will in issue at point 'A' in the presence of Sh. Y.L. Sachdeva, Advocate, but that he was present at the time of registration before the Sub-Registrar. The then record keeper, one, Sh. Sidhi Singh, had brought to court a certified copy of the Will in issue (i.e. Will dated 23.11.1981). Since the original Will was lost, and an FIR had been lodged, the constable, deployed at the concerned police station, one, Sh. Karam Chand, was also examined. Based on a cumulative appreciation of the evidence, the concerned court came to the conclusion that Letters of Administration could be granted in favour of the respondent, as there were no suspicious circumstances obtaining in the matter which could create a doubt as to the genuineness of the Will in issue. The relevant portions of the said judgement, are extracted hereinebelow:

".....3. In support of the petition, the petitioner himself has appeared in the witness box as P.W.1 and has examined Sidhi Singh record keeper of the office of Sub Registrar, P.W.2 Karam Chand, constable and P.W. 3 Shri Y.L. Sachdeva, Advocate.

4. P.W. 1 Sidhi Singh, Record Kepr, has stated that he has brought the summoned record and that marked 'A' is the certified copy of the will dated 23.11.81 executed by Jumma Mal son of Beti Ram which was issued by the office of Sub Registrar. P.W.2 has proved the copy of the FIR regarding loss of original will dated 23.11.81. PW.3 is Shri Y.L. Sachdeva, Advocate, an attesting witness of the said will. He has proved the execution of the said will by Jumma Mal. He has stated that Jumma Mal was of sound disposing mind at the time of execution of the said will and that he had executed the said will without any pressure, coercion or inducement. He has further stated that Jumma Mal had executed the said will, certified copy of which has been proved as Ex. P.3, in his presence as also in the presence of Saty Narain and that they both had signed in presence of each other as also in the

presence of Jumma Mal. He has further stated that Jumma Mal had affixed his thumb impression at point 'A' in his presence as also in the presence of Saty Narain. He has further stated about the registration of the said will before Sub Registrar, before whom, also Jumma Mal had admitted the contents of the said will as correct and affixed his thumb impression at point E and Saty Narain had signed at point 'F'. P.W.4 Rati Ram, petitioner, has stated that Jumma Mal was his maternal uncle who died on 30.12.84 as per death certificate Ex. P.4; that he has left behind only one son Saty Narain; that Sharbati Devi wife of Jumma Mal died on 20.10.81 as per death certificate Ex. P.5; that Jumma Mal has left behind land measuring 427 sq. yds. out of Khasra No. 256/1, situate at village Ghonda, Gujran Khadar, Illaqa Shadhara, Delhi, now known as B-3, Bhajanpura, Village, Ghonda, Shahdara, Delhi. He has further stated that Jumma Mal had executed a will during his life time and had handed over the same to him during his life time; that the abovesaid property has been bequeathed in his favour. He has further stated that original of the will aforesaid was lost regarding which report Ex. P.2 was lodged with the police.

5. I have heard arguments of Id. counsel for the petitioners and perused the evidence. From the evidence it is established that Jumma Mal had executed a will during his lifetime while in sound disposing mind, without pressure, coercion or inducement and further that he had executed the said will in the presence of two attesting witnesses. I find no suspicious circumstance to doubt the genuineness of the aforesaid will. Considering the facts and circumstances of the case, I am of the view that the petitioner is entitled to grant of Letters of Administration...."

(emphasis is mine)

13. Having regard to the above, I am of the view that the appellant has not been able to establish that the respondent had made interpolations in the Will after the Will had been executed by Late Sh. Jumma Mal. As would be evident from the extracts of the judgement dated 21.04.1994, Late Sh. Jumma Mal was present in the office of the Sub-Registrar when the Will in

issue was executed. The testamentary court taking into account the testimony of various witness, which included, amongst others, the attesting witness, Sh. Y.L. Sachdeva, and the record keeper, came to the conclusion that Will dated 23.11.1981, which was executed in favour of the respondent, was genuine and was not impregnated with suspicious circumstances.

13.1 Therefore, the answer to the issue raised earlier: as to what point in time corrections were made in the Will dated 23.11.1981, has to be that they were made prior to its execution and registration, based on the material available on record.

14. This brings me to the argument advanced on behalf of the appellant that these findings could impact the litigation which is presently subsisting between the appellant and the respondent in CS(OS) No. 1705/2003.

14.1 According to me, the result of that litigation would depend on the evidence that the parties are able to place before the concerned court. Suffice it to say, that this court is clearly not concerned with a legal tenability of the clutch of documents purportedly executed, albeit jointly, by the respondent and his wife in favour of the appellant. To my mind, since the appellant's case in the suit i.e. CS(OS) 1705/2003, is that, the GPA, Agreement to Sell and the two Wills, were jointly executed by the respondent and his wife, as long as the appellant is able to establish that the respondent was a signatory to those documents, the findings in the instant case would have little impact on those proceedings.

15. As regards Mr Gupta's submission that since notice was not issued by the testamentary court, the proceedings carried out, had no legal sanctity, in my view, is a submission which is misconceived. The reason for this, is that, the stand of the respondent is, that the, GPA, Agreement to Sell, Affidavit, Will and a registry receipt of Rs. 11000/- dated 01.10.1987 was cancelled by the respondent, and therefore, quite logically, according to him,

the appellant had no interest in the subject property. The respondent, therefore, consistent with his stand in the testamentary action did not think it fit to advert to this aspect of the matter. Consequently, the testamentary court in turn did not issue notice to the appellant. Thus, in my view, no fault can be found with the manner in which the testamentary court proceeded with the action filed by the respondent for grant of Letters of Administration. The judgements cited by Mr Gupta on this aspect, in the facts of this case, would clearly have no applicability.

16. Before I conclude, I must deal with one last argument made on behalf of the appellant, and that too in the rejoinder, for the very first time. This argument was advanced by Mr Rahul Gupta and not by Mr Shekhar Gupta, who had, in the opening, made submissions on behalf of the appellant. The submission made on behalf of the appellant, was that, since there was an obvious alteration in the Will dated 23.11.1981, the same could only have passed muster if, it complied with the provisions of Section 71 of the 1925 Act. In this behalf, it was contended that in the very least, unless the signatures of the testator and the subscription of the witnesses was made in the manner prescribed in Section 71 of the 1925 Act, the Will could not have been treated as having been validly executed.

17. It was, however, conceded by the learned counsel for the appellant that this submission was not raised before the trial court. It was also conceded that no averment to this effect had been raised either in the petition filed before the trial court or in the appeal preferred before this court. The learned counsel for the appellant, however, submitted that since it was a pure question of law, based on the facts already obtaining on record, this court could return a finding in that behalf.

18. In my view, there are several difficulties in accepting this argument in the present case. The first, to my mind, as discussed hereinabove, is that, the

appellant has failed to produce evidence which would be suggestive of the fact that the alleged interpolation (which is termed as alteration of the Will) did take place after the execution and/or registration of the Will.

18.1 Section 71 of the 1925 Act gets triggered only if there is “obliteration”, “interlineations” or “alteration” made “*after*” the execution of the Will. No doubt, where there is alteration the onus of proof would be on one who propounds the Will (and in this case the onus would have been on the respondent), but then this onus can only be discharged if, such a plea is raised and an issue gets struck in that behalf. In this case, since no plea based on Section 71 was raised, no such issue was framed. The respondent had therefore, no opportunity to lead evidence in that regard. Therefore, if at this stage such a plea is considered, it would be doing injustice to the respondent. [See: *Henry Spencer Cooper vs Daniel Smith Bockett (1846) IV Moore, P.C. 419*]

18.2 Second, clearly for the 16 years, the appellant chose not to challenge the probate granted in favour of the respondent, despite knowledge. This aspect has clearly come through in the testimony of the husband of the appellant, namely, Mr Hira Lal (PW4). The relevant extract of his testimony is extracted hereinbelow:

“.... It is correct that Rati Ram has obtained the probate of the will dated 23.11.1981 of Jumma Mal. It is correct that one civil suit was filed against me by Rati Ram and which was contested by me....

..... It is correct that during the pendency of the injunction suit Rati Ram disclosed that he has obtained the probate of the will dated 23.11.1981 but I could not understand its meaning at that time because I was ignorant about the meaning of probate....”

18.3 The learned trial court, based on the acceptance of the fact, both by the appellant and her husband, Sh. Hira Lal (PW4), that they had knowledge of the execution of grant of probate in favour of the respondent, made the

following observations:

“..... It is admitted by PW4 Sh. Hira Lal that a copy of the probate order was filed by Sh. Rati Ram in a civil suit which was filed by him against PW4 Sh. Hira Lal and his son. So Smt. Maina Devi as well as her husband were well aware of obtaining of the probate of the will dated 23.11.1981 by Sh. Rati Ram as early as in 1996...”

18.4 Clearly, the petition for revocation could have been dismissed on this ground as well, as the period of limitation under Article 137 of the Limitation Act, 1963 (in short the 1963 Act), would apply to such an action as well. There is no specific provision in the 1963 Act, which deals with period of limitation for institution of revocation of probate petition, therefore, necessarily, the residuary Article i.e. Article 137 would apply. The said Article has been applied on the same principle to a petition filed for grant of probate. See the judgement of the Supreme Court in the case of ***Kunvarjeet Singh Khandpur vs Kirandeep Kaur & Ors. (2008) 8 SCC 463.*** As per ***Kunvarjeet Singh's*** case the period of three (3) years for institution of a petition for grant of probate commences from the point in time when the right to apply accrues to the petitioner. Therefore, if a revocation is sought of grant of probate or letters of administration, the period of three years should commence, at least from the date when the probate is granted, as once a probate is granted, the same operates in rem. [See: Judgement of the Bombay High Court dated 29.04.2014, in Misc. Petition No. 85/2012 in Petition No. 214/1994, titled: ***Uma Vithal Jhaveri & Ors. Nikhl Vithal Jhaveri, Adil Phiroz Makhania vs Dilip Gordhandas Gondalia & Aspi Barjor Deboo 2014 (5) Bom.CR 384; Lydia Agnes Rodriques Nee D'Cunha & Ors. vs Joseph Anthony D'cunha & Ors. 2014(1) Bom.CR 811; and Jagjeevan Prasad vs Parvathi Bai & Ors. 2013 SCC Online Kar 153***].

18.5 It will be noticed that in the present case, admittedly, the petitioner had knowledge of letters of administration being granted, in favour of the respondent, as far back as, in 1996. Therefore, to entertain an objection raised for the first time under Section 71 of the 1925 Act, and that too without relevant averments, would amount to travesty of justice.

18.6 Lastly, Section 263 itself gives the discretion to the court to revoke a grant of probate or letters of administration only for a “*just cause*”. [see *Ms. Latikabala Dasi vs Anil Behari Ghose AIR 1953 Cal 103* at pages 105-106 in paragraph 18]. Learned counsels for the appellant have not articulated, under which clause of the explanation to Section 263, would the instant case fall. However, what is clear that for any of the clauses to apply, the petitioner would have to first make the relevant averment, and thereafter, support it by relevant evidence to justify the plea. In this case, as discussed above, there is no evidence to suggest that the alleged interpolation in the Will dated 23.11.1981, was made after its execution and/or registration, and therefore, the court, to my mind, in the instant case, cannot invoke the power which is to be exercised for just cause, to revoke or annul the letters of administration granted in favour of the respondent.

18.7 Thus, in my view, the submission made on behalf of the appellant, based on the provisions of Section 71 of the 1925 Act, in the facts of this case cannot be sustained.

19. For the foregoing reasons, I am not inclined to interfere with the final outcome reached by the trial court vide the impugned judgement. The appeal is, accordingly, dismissed. There shall, however, be no orders as to costs.

RAJIV SHAKDHER, J

NOVEMBER 30, 2015

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