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SK
Ct. No. 18
21.01.2021

**C.O. No. 959 of 2020
(Via Video Conference)**

**Tapas Kumar Manna
Vs.
Rama Manna**

Mr. Somnath Roy Chowdhury ... For the petitioner.

Mr. Subhash Chandra Basu... For the opposite party.

As prayed for by Mr. Roy Chowdhury, learned advocate for the petitioner, leave is granted to correct the cause title of the revisional application.

The petitioner is the named executor of the alleged last Will and testament of one Kanai Lal Manna dated August 7, 1985. The petitioner after the death of the testator applied for grant of probate of the said Will. The application has become a contentious cause being objected by the opposite party to the said grant and is pending before the 5th Court of learned Additional District Judge at Howrah being Probate Suit No. 13 of 2016.

There is a reference of an earlier Will of the said testator in the Will of which the petitioner is seeking probate.

The opposite party filed an application under Order XI Rule 14 read with Section 151 of the Code of Civil Procedure for a direction upon the petitioner to produce the said earlier Will for her inspection.

The learned trial Judge by the first impugned order dated April 12, 2019 allowed the said prayer of the opposite party.

The petitioner thereafter on September 20, 2019 filed an application praying exemption for production of the said earlier Will on the ground that the said Will is not in his custody and control.

The learned trial Judge by the second impugned order dated January 3, 2020 has rejected the said application.

The petitioner is aggrieved by both the said orders.

Mr. Somnath Roy Chowdhury, learned advocate appearing on behalf of the petitioner submits that his client is unable to comply with the direction for production of the said first Will as he is not in possession of the said document. He further submits that his client has applied for grant of probate of the second Will of the said Kanai Lal Manna and in the said Will although there is a reference of the alleged first Will of the said Kanai Lal Manna but neither the said second Will has any relevance in the issue involved in the present application for grant nor his client is any way relying on the said alleged first Will to prove his case for grant of probate of the second Will of the said Kanai Lal Manna.

Therefore, according to him, the direction for production of said alleged first Will of said Kanai Lal Manna is not called for.

On the other hand, Mr. Subhash Chandra Basu, learned advocate appearing on behalf of the opposite party submits that the direction for producing the said first Will of said Kanai Lal Manna was passed April 12, 2019, the petitioner immediately did not challenge the said order rather waited for a long time for filing an application praying for exemption to produce the said document. Therefore, according to him, the conduct of the petitioner signifies that he can produce the said document.

Heard learned counsel for the parties, perused the materials on record.

The petitioner has applied for grant of probate of the second Will of Kanai Lal Manna, no doubt in the said Will there is a reference of the earlier Will but such reference alone does not oblige the petitioner to produce the said document for the inspection of the objector/opposite party, unless atleast a prima facie proof of the possession and/or control of the petitioner over the said document comes before the Court.

In the present case, such evidence is lacking, therefore, direction to the petitioner for production of the said document for the inspection of the opposite party is not warranted.

Needless to say that in course of the trial of the suit the party who wants to rely upon the said first Will to bring home his or her case is obliged to produce the same before the Court and in that event the other party is entitled to take inspection of the said document.

The revisional application succeeds for the aforesaid reason. The orders impugned are set aside.

C.O. 959 of 2020 is disposed of with the above terms. No order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)