

S/L 31
18.11.2022
Court No.652
SD

CO 1542 of 2020

Dinesh Kumar Arya
Vs.
Ramesh Kumar Arya

Mr. Susenjit Banik

...for the Petitioner.

Mr. Sarthak Barman

...for the Opposite Party.

Supplementary affidavit filed by the petitioner in Court today be kept with the record.

Being aggrieved and dissatisfied with the order no.77 dated 18.11.2020 passed by the learned Additional District Judge, Fast Track, Court IV, Barrackpore in O.S (Will) No.24 of 2012, the present revisional application has been preferred.

It is submitted by filing supplementary affidavit that the said O.S. No.24 of 2012 subsequently transferred to the Court of learned Additional District Judge, 3rd Court, Barrackpore by this Court vide order dated 06.4.2021 in C.O. 629 of 2021.

It is contended by the petitioner that the opposite party filed an application under Section 276 of the Indian Succession Act for grant of probate and the petitioner herein after receiving summon appeared before the erstwhile court of learned Additional District Judge, Fast Track, Court IV, Barrackpore and filed objection. The petitioner herein contended that at the time of execution of the will dated

10.9.2009 the testator was under care and custody of the petitioner/opposite party herein. Testator could not make the will as alleged in favour of the opposite party on that date. At that point of time the testator was medically treated by the Dr. P.K. Mazumder.

The petitioner states that in the said probate proceeding being O.S. No.24 of 2012, the petitioner's witnesses were examined and cross-examined. The witnesses on behalf of the petitioner herein/opposite parties were also examined. The petitioner's vital witness Dr. P.K. Mazumder was not examined and it appears that vide order no.73 dated 14.01.2020 that day was fixed for further evidence on behalf of the opposite party (the petitioner herein). It further appears that in the first paragraph of the said order, it is recorded that as OP/petitioner herein has not taken any step on repeated call, so the court has no other option but to close the evidence of opposite party's witness. In the later portion of the order, it is recorded that after passing of the said order Opw2 namely Dr. P.K. Mazumder was present and opposite party had taken steps.

It further appears that subsequently without recording the evidence of the said witness, namely, Dr. P.K. Mazumder, by the impugned order dated 18.11.2020 the evidence of the Opw was closed with the observation by the trial court that the case is pending since 21.12.2010 and several dates were given to the opposite party for adducing evidence but they failed to bring their witness and as such,

he was pleased to hear the argument on behalf of both the sides and fixed a date for passing judgment.

Learned counsel for the petitioner submits that for effective and conclusive adjudication of the case, once for all the evidence of that witness namely Dr. P.K. Mazumder is very much required in this case in order to ascertain whether the testator was physically fit and mentally alert at that point of time or not for the purpose of execution of the will, because the testator was under the treatment of the said doctor at the relevant point of time.

Learned counsel appearing on behalf of the opposite party raised objection contending that several opportunities were given to the opposite party/petitioner herein for adducing evidence, but in spite of that he did not avail the same and as such, the court was justified for hearing argument on behalf of both the parties and fixed date for delivery of judgment.

Having considered the aforesaid facts and circumstances of the case, I am of the view that for effective and conclusive adjudication of the case once for all if the opposite party/petitioner is given another opportunity to adduce evidence on his behalf and the petitioner/opposite party herein is given liberty to cross-examine the said witness and after recording the evidence if the case is disposed of finally, neither party will have any cause to prejudice.

In view of the above, this revisional application being C.O. 1542 of 2020 is allowed.

The order impugned by which the opposite party/petitioner's prayer for adducing evidence was rejected is hereby set aside.

The petitioner/opposite party is hereby given further opportunity to adduce evidence on his part within a period of eight weeks from the date of communication of the order before the trial court and in absence, the trial court will be at liberty to go for final adjudication of the case.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)