

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

PRESENT:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Supratim Bhattacharya

FA 33 of 2010

Sri Gopal Chandra Manna

Vs.

Smt. Arati Manna & Ors

For the Appellant : Mr. Probal Mukherjee

Mr. Debanik Banerjee

Mr. Nilanjan Bhattacharya

For the Respondents : Mr. Rabindranath Mahato

Mr. Aritra Shankar Ray

Last Heard On : 11.10.2023

Judgement Delivered On : 14.12.2023

Supratim Bhattacharya, J.:-

1. Hearing of the instant appeal was concluded on 10th day of August 2023 even without the records of the Court below. In spite of efforts of the registry, the records of the trial proceeding could not be obtained for 3 months since then. Finding no other alternative the judgement is being delivered on the basis of some documents that the parties have supplied.

- 2.** The instant appeal arises out of the Judgement and Decree passed by the Ld. Additional District Judge, 4th Court Paschim Medinipur in Other Suit No. 25 of 2008, dated the 29th day of January 2009, wherein the said Ld. Judge has been pleased to dismiss the suit on contest, praying for grant of probate, with cost of Rs. 10,000/-.

The said Ld. Judge has been pleased to reach to the conclusion that the 'Will' executed by Harisadhan Manna dated 09.07.2003 is forged, fabricated and procreated document.
- 3.** The appellant herein namely Gopal Chandra Manna was the applicant for grant of probate in respect of the said 'Will' being the executor of the said 'Will'.
- 4.** Smt. Arati Chowdhury, Archana Hazra and Sumitra Majhi, being the sisters of the applicant raised objection and opposed the prayer for grant of probate in respect of the said 'Will', who are the respondents in the instant appeal.
- 5.** Through the said application praying for probate it has been stated that the impugned Will was executed by the testator namely Harisadhan Manna, who was the father of the contending parties, in presence of the witnesses after being prepared as per his instruction.
- 6.** The fact of the instant lis is that the appellant/plaintiff namely Gopal Manna prayed for grant of probate in respect of a 'Will' said to have been executed on 09.07.2003 by his father the testator namely Harisadhan Manna, after being prepared as per his direction and in his presence.

The three sisters of the petitioner contested the said suit as a result being contentious the judicial miscellaneous case has been renumbered as other suit.

The said suit has been disallowed by coming to the conclusion that the 'Will' in question is false and fabricated one. As such probate has not been granted in respect of the said 'Will' against which the appellant petitioner has preferred the instant appeal.

7. The Ld. Counsel appearing on behalf of the appellant/petitioner during his exhaustive submission has stated as follows:

- i)** The 'Will' in question was prepared as per the direction of the testator and after the said 'Will' being prepared it was read over to the testator who had executed the same in presence of the attesting witnesses.
- ii)** The Ld. Counsel has further submitted that the testator had signed on the said 'Will' after the same had been prepared and read over to him.
- iii)** He has further submitted that the signature of the testator in the said 'Will' took place in presence of the attesting witnesses and the attesting witnesses had signed on the said 'Will' on being fully satisfied that the 'Will' in question has been prepared as per the direction of the testator and has been executed by the testator himself.

- iv)** The Ld. Counsel has also submitted that the 'Will' in question does not have any suspicious circumstance so that the same cannot be taken into consideration.
- v)** The Ld. Counsel has further submitted that after the preparation of the said 'Will' it was read over to the testator and thereafter the 'Will' was executed by the testator.
- vi)** He has further submitted that one of the attesting witnesses has deposed and has proved the impugned execution of the said 'Will'.
- vii)** He has further submitted that all the procedures having been adopted and the procedure laid down under Section 68 of the Evidence Act and Section 63 of the Succession Act being complied and there being no suspicious circumstance the Trial Court has misdirected itself by not granting probate in respect of the said 'Will'. In support of his contention the Ld. Counsel has cited the following judgement being (2020) 16 SCC 209.

Banking upon the aforesaid submission the Ld. Counsel has prayed for granting of probate in respect of the said 'Will' by setting aside the order passed by the Ld. Trial Judge.

- 8.** The Ld. Counsel appearing on behalf of the respondents has submitted the following:

- i)** That the 'Will' in question is a forged and fabricated one and their father had no intention to prepare a 'Will' and execute the same and thus denying the daughters from their right of maintenance.
- ii)** The Ld. Counsel has further submitted that the name of the daughters of the testator were not cited as near relatives, which creates immense doubt as regards to the intention of the appellants.
- iii)** The Ld. Counsel has submitted that the testator had good relation with all his sons and daughters and the testator had no intention to deprive his daughters from the property.
- iv)** The Ld. Counsel has further submitted that the 'Will' in question has not been prepared as per the direction of the testator instead the said 'Will' has been scribed on blank papers which were previously signed by the testator.
- v)** The Ld. Counsel has further submitted that the said 'Will' is the result of conspiracy of the sons of the testator along with the scribe and the attesting witnesses.
- vi)** Banking upon the facts of suspicious circumstance the Ld. Counsel has submitted that the Ld. Trial Court has come to the correct finding that the 'Will' is a false and fabricated one.

Stressing upon the aforesaid facts and circumstances the Ld. Counsel has prayed for dismissal of the instant appeal.

9. The moot point in the instant lis is as to whether the 'Will' in question is a genuine one and has been executed by the testator having full mental capacity.
10. The elder son of the testator namely Gopal Chandra Manna being the executor had applied for grant of probate in respect of the said 'Will'. The said executor has deposed and along with him Adhir Chandra Mondal, one deed writer being the scribe of the said 'Will', Ajit Kumar Saha, Bangshibadan Pattanaik and Sunil Kumar Ghosh being the witnesses of the said 'Will' and the Ld. Advocate have deposed.
11. This Court now deals with the evidence of the witnesses which will guide to the destination.
 - i) During the cross-examination the executor has deposed that he could not say how and under what circumstances the 'Will' has been executed.
 - ii) The scribe of the said 'Will' during his cross-examination has deposed that, to scribe the said 'Will' he had taken one and a half hour and one unknown person had called him from the registry office. He had further deposed that he did not consult any document to scribe the 'Will' and Harisadhan Manna did not supply any draft to him for scribing the 'Will'. He has further deposed that he does not know as to who called the Ld.

advocate. He has further deposed that he did not ask Harisadhan Manna to give details of the 'Will'.

- iii)** Ajit Kumar Saha one of the attesting witnesses during his cross-examination has deposed that as per direction of the Ld. Lawyer the scribe wrote the 'Will' and as he did not go through the 'Will' so he cannot say what was written in the 'Will'. He has further deposed that Harisadhan Manna never stated to them that to deprive the daughters and wife, the 'Will' is being prepared.
- iv)** It is of importance to note that the said witness has further deposed that if he would have been aware of the fact that the 'Will' had been created and written to deprive the wife and daughters of Harisadhan he ought not have signed in the 'Will'. He has further deposed that he did not go to sign in the disputed 'Will' to deprive the wife and daughters of Harisadhan Manna. He has further deposed that Harisadhan Manna never stated to them that by that 'Will' he will not give any property to his wife and daughter.
- v)** Bangshibadan Pattanaik one of the attesting witnesses has deposed that he read the 'Will' and its content on the date of its scribing and he realized that the wife and daughters of Harisadhan were being deprived. He has further deposed that Harisadhan did not state to them that he intends to deprive his wife and daughters. He has further deposed that Harisadhan did not do such act to deprive his wife and daughter in that sitting. This witness has also deposed that he ought not have signed in the 'Will' if he had known

that by that 'Will' the wife and daughters of Harisadhan were being deprived from the property of the testator. He has further deposed that he did not go to the place of occurrence (P.O.) for preparing such 'Will' for depriving the wife and daughters of Harisadhan but at that stage they have learnt that the wife and daughters of Harisadhan have been deprived from getting the property.

12. Thus, from the evidence it transpires that Ajit Kumar Saha, one of the attesting witnesses has stated during his cross-examination that as per direction of the Ld. Lawyer the scribe wrote the 'Will', he has further deposed that Harisadhan Manna never stated to other persons that to deprive his daughters and wife the 'Will' had been prepared. He has further deposed that he did not go to sign the 'Will' through which the wife and daughters of the testator have been deprived. He has further deposed that the testator never stated to them that by that 'Will' he shall not give any property to his wife and daughters. Another attesting witness namely Bangshibadan Pattanaik has deposed that the testator did not state the fact of depriving his wife and daughters. This witness has further deposed that the scribe was writing the content as per line by line dictation of Harisadhan Manna and the lawyer did not dictate the scribe at the time of scribing the 'Will'.

13. So there is contradiction between the oral evidence of Ajit Kumar Saha and Bangshibadan Pattanaik the two attesting witnesses. While Ajit Kumar Saha has deposed that as per direction of the Ld. Lawyer the scribe wrote the 'Will' on the other hand Bangshibadan

has deposed that the scribe was writing the content as per line by line dictation of Harisadhan. Thus, the root of the 'Will' in question is shaken to the extent as to the fact as per whose dictation the 'Will' in question was written. When there is controversy as regards to the person who dictated the 'Will' which is of sole and prime importance the question of suspicious circumstance arises.

- 14.** It is known to all that a 'Will' is the expression of a person whose desire is spoken through the same after his demise and in the instant case where there is discrepancy as regards to the author of the 'Will' the 'Will' in question does not have any leg to stand upon.
- 15.** Both the attesting witnesses have deposed that the testator had never stated to them that he intended to deprive his wife and daughters.
- 16.** To add further both the attesting witnesses have deposed that they were not aware of the fact that the wife and daughters of Harisadhan were deprived of their right of the property of Harisadhan and they would not have signed in the 'Will' if they had the knowledge that the testator was depriving his daughters and wife through the said 'Will' in question. Thus, both the attesting witnesses have not supported or corroborated the fact of writing of the 'Will' as per the wish of the testator which is the basic aspect of a 'Will'.
- 17.** From the evidence of Adhir Chandra Mondal, the scribe it reveals that he did not consult any document to scribe the 'Will' and the testator also did not supply any draft to him to scribe the 'Will'

18. Sunil Kumar Ghosh, the Ld. Advocate during his cross-examination has deposed that what the witnesses heard from the testator he also heard it. These gives rise to immense confusion and suspicion.

19. The basic requisites for a valid 'Will' are that the said 'Will' shall be either written by the testator or shall have to be written by somebody else as per the dictation of the testator or according to the instruction of the testator. In this instant case in hand the scribe has stated that he did not consult any document to scribe the 'Will' and the testator did not supply any draft to him for scribing the 'Will' so now the question arises as to who had dictated the 'Will'. In this regard Ajit Kumar Saha and Bangshibadan Pattanaik have deposed contrary to each other. The attesting witness namely Ajit Kumar Saha has deposed that the scribe wrote the 'Will' as per direction of the Ld. Advocate while Bangshibadan Pattanaik the other attesting witness has deposed that the scribe wrote the will as per line by line dictation of the testator. This fact shakes the fact of the preparation of the 'Will' when the preparation of the 'Will' is in doubt, there is no scope of scrutinizing the facts which are said to be performed later on, that is execution of the 'Will' and signing of the other persons that is the scribe and the attesting witnesses.

20. In this regard this Court places the judgement of the Hon'ble Apex Court which has been published in (2023) 9 SCC 734 wherein the Hon'ble Judges of the Apex Court have dealt with the fact of, the

requisites for a valid 'Will'. Paragraphs 8 and 9 of the said judgement states as follows:

“8. Thus, a bare reading of the abovementioned provisions would show that the requirements enshrined under Section 63 of the Succession Act have to be categorially complied with for the execution of the will to be proven in terms of Section 68 of the Evidence Act.

9. A will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.”

From the aforesaid citation it is apparent that a 'Will' is nothing but the expression of the testator which speaks from the death of the testator, in this instant case the fact of as per whose saying the said 'Will' in question has been prepared is in controversy so the instant 'Will' has a big question on it as regards to its validity.

21. Thus, the prayer for granting of probate in respect of the instant 'Will' cannot be adhered to.

22. The Ld. Trial Judge has dealt in details as regards to the invalidity of the 'Will' and has come to the just conclusion.

23. Considering the aforesaid discussion this Court is of the view that the Judgement passed by the Ld. Trial Judge does not require any interference. Thus, the judgement passed by the Ld. Trial Court stands affirmed.

24. FA 33 of 2010 stands accordingly **dismissed**.

25. Parties shall be entitled to act on the basis of the server copy of the Judgement and Order placed on the official website of the Court.

26. Urgent certified photo copies of this judgement, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree,

(Supratim Bhattacharya, J.)

(Rajasekhar Mantha, J.)