

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Testamentary and Intestate Jurisdiction
ORIGINAL SIDE

IA No.GA/2/2023
In PLA/316/2021

IN THE GOODS OF:
SRIPARNA BISWAS, DECEASED

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : January 9, 2025

Appearance:
Ms. Hashnuhana Chakraborty, Adv.
Mr. Vinay Kumar Purohit, Adv.
... for the applicant

The Court: Ms. Hashnuhana Chakraborty, learned Advocate, is appearing for the applicant, namely, Kana Sengupta.

The applicant has filed the present application being GA/2/2023 praying for revocation of the probate granted by this Court of the alleged Will dated 10th February, 2020 in PLA/316/2021 by an order dated 5th January, 2023.

Counsel for the applicant has filed affidavit of service showing that the date of hearing of the case was duly communicated to the learned Advocate-on-Record of the executor as well as to the executor by way of Speed Post and has filed affidavit of service but in spite of service of notice, none appears on behalf of the executor.

Learned Counsel who was appearing for the executor, on receipt of notice by a communication dated 7th January, 2024 informed the learned Advocate-on-Record of the applicant that he was previously appearing on

behalf of the executor but now he is not getting any instruction and is not appearing in the matter. Let affidavit of service and the communication of the learned Counsel for the executor dated 7th January, 2024 be kept with the record.

Counsel for the applicant submits that the executor has obtained the probate of the alleged last Will and Testament dated 10th February, 2020 by not issuing any notice to the applicant.

Counsel for the applicant submits that the applicant is the sister in law of the testatrix (sister of the husband of the testatrix).

Counsel for the applicant submits that in the probate application in paragraph 5, the executor has categorically stated that the deceased had legal heirs and representatives from the side of her husband under the Hindu Succession Act, 1956, who would have been entitled to the estate left by the deceased had she died intestate and the whereabouts of such legal heirs are not known to the executor.

Counsel for the applicant brought to the notice of this Court to the order dated 5th January, 2023 wherein the probate was granted. In the said order, it is recorded that general citation and publications were made though there was no legal heir/heirresses from the husband's side.

The statement made by the executor in paragraph 5 of the probate application and the order passed by this Court by an order dated 5th January, 2023 are itself contradictory.

Counsel for the applicant further brought to the notice of this Court that the applicant being the sister of the husband of the testatrix is

residing at the same address i.e., 176A, Rashbehari Avenue, 2nd floor, Prasanth Tailoring Shop, Kolkata-700029 wherein the testatrix was residing. As from the address mentioned in the probate application and in the Will, the same address is appearing and thus, the statement made by the executor in paragraph 5 of the probate application that the whereabouts of the legal heirs are not known to the executor is false.

Counsel for the applicant submits that though the publications were made but the applicant had no knowledge about the said publications and only after the grant of probate, the applicant came to know about the same and immediately, the applicant has filed the present application.

Counsel for the applicant has relied upon Section 263 of the Indian Succession Act, 1925 and submitted that if the probate was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case, the probate granted by this Court can be revoked.

Counsel for the applicant has further relied upon illustration of sub-Clause 2 wherein it is mentioned that the grant was made without citing parties ought to have been cited.

Considered the submission made by the Counsel for the petitioner. Perused the application and the documents available on record.

Counsel for the executor has admitted in the probate application that the property which the testatrix has executed her alleged Will is from the side of her husband and it is also admitted that the deceased legal heirs

and the representatives from the side of her husband under the Hindu Succession Act are entitled to the estate left by the deceased.

In the Will as well as in the probate application, the address of the testatrix is mentioned as 176A, Rashbehari Avenue, P.S. Gariahat, Kolkata-700029 and the address wherein the present applicant is residing is also same as the same is proved from the AADHAAR Card disclosed by the applicant in the present application.

Considering the above, this Court finds that the executor had knowledge that the testatrix died leaving behind the sister of her husband and had the knowledge with regard to the address of the sister but has not made her party and no notices were sent to the applicant though the applicant is having caveatable interest.

Accordingly, this Court is of the view that it is the fit case wherein the probate granted by this Court is required to be revoked.

Accordingly, the order dated 5th January, 2023 wherein this Court has granted probate is recalled. Probate granted to the executor dated 1st March, 2023 is also recalled.

The executor is directed to surrender the probate issued by this Court in the department within two weeks from date.

GA/2/2023 is disposed of.

PLA/316/2021 is restored in its original file and number.

(KRISHNA RAO, J.)