

IA No. GA 2 of 2022
APOT No. 178 of 2023
with
TS No. 10 of 2021
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

In the matter of:
Jatindra Nath Biswas (Dec)
And
Sirupa Biswas
Versus
Supratik Biswas

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 5th September 2023

Appearance:
Mr. Rahul Karmakar, Advocate
Mr. Asif Sohail Tarafdar, Advocate
Mr. Sounak Mukherjee, Advocate
for the appellant

Mr. Ayan Borral, Advocate
Mr. I. B. Jha, Advocate
Mr. A. KI. Ghosh, Advocate
for the respondent

The Court: We admit the appeal.

After hearing learned counsel for the parties we are in a position to dispose of the appeal dispensing with all formalities.

Jatindra Nath Biswas executed his alleged last will and testament on 23rd March 2014. He died on 21st May 2019. The appellant, Sirupa Biswas, is his widow and propounder of this alleged will as executrix. By this alleged will the testator had bequeathed his entire properties to the propounder and his younger son, Pradipto Biswas residing in the United Kingdom.

The elder son, Supratik Biswas, who was excluded from succession challenged this alleged will by filing a caveat and thereafter an affidavit in support thereof. The proceeding is now numbered as a contentious cause after filing of the affidavit in support of the caveat.

At this stage, the appellant made an application for the amendment of the application for probate. Several paragraphs were sought to be added by way of proposed amendments.

The testator's illness of cancer and that he was in a fit mental state at the time of execution of the will and that the elder son/caveator did not look after his father were sought to be stated. The United Kingdom had granted him tourist visa to visit his younger son was a proof of the fact, it was stated.

On the objection raised by the respondent the learned single judge in his impugned judgment and order dated 25th April 2023 found the proposed amendment to be untenable and dismissed the application.

Hence this appeal.

On examination of the proposed amendments we find that they may be irrelevant. The propounder is required to present the last will and testament before the court for its evaluation that it was properly executed, attested with full mental capacity and is otherwise genuine. What is stated in the proposed amendment is fact with evidence, as a kind of response to the affidavit in support of the caveat. In our opinion, they are superfluous and should have no repercussion on the proceedings.

We make it clear that each and every fact sought to be urged by the proposed amendment has to be proved before the appropriate court.

In those circumstances, we modify the impugned judgment and order dated 25th April 2023 by allowing the above amendments, subject to our observation.

The department is directed to carry out the amendments as prayed for within two weeks of communication of this order.

Let a copy of the amended plaint be served by the advocate-on-record for the appellant/plaintiff on his counterpart for the respondent/defendant within 15th September 2023.

Liberty is given to the caveator to file an additional written statement by 29th September 2023.

The appeal (APOT 178 of 2023) and the connected stay application (IA No. GA 2 of 2023) are disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose