

S/L 9
09.02.2024
Court. No. 3
Sourav

CO 2123 of 2023

Dr. Bishakha Basu Ray & Ors.
Vs.
Smt. Maya Basu Ray & Anr.

Mr. Kaustav Chandra Das

...for the petitioner.

Mr. Arindam Ghosh

Mr. Chirantan Sarkar

...for the opposite parties.

1. Both the petitioners and opposite parties are represented by their respective learned advocates.
2. In this revisional application as filed under Article 227 of the Constitution of India, the order No. 22 dated 07.06.2023 as passed by the learned Additional District Judge, 13th Court at Alipore, 24 Parganas (South) in O.S. No. 54 of 2012 has been impugned. By the impugned order, the learned trial Court in a suit for probate has been pleased to reject the substituted defendant nos. 2(a) to 2(c)'s application under Order 6 Rule 17 of the Code of Civil Procedure. The said substituted defendant nos. 2(a) to 2(c) felt aggrieved and preferred the instant revisional application.
3. In support of the instant revisional application, Mr. Das, learned advocate for the substituted defendants/revisionists at the very outset draws attention of this Court to the copy of the petition for amendment which has been filed before the learned trial Court and which has been annexed with the instant revisional application being Annexure P-1.

Attention of this Court is also drawn to the certified copy of the impugned order.

4. It is contended by Mr. Das, learned advocate for the revisionists that though the present revisionists being the substituted defendant nos. 2(a) to 2(c) have filed the application for amendment at a belated stage i.e., in course of evidence of P.W. 2 but in the said application for amendment, the present revisionists before the learned trial Court has assigned sufficient reason for not filing such application earlier since the present revisionists being the substituted defendant nos. 2(a) to 2(c) before the learned trial Court in their application for amendment has specifically mentioned that in spite of due diligence, they could not come to learn about the existence as well as the contents of the previously three executed registered Wills dated 23.05.1989, 09.09.1995 and 17.07.1998 by the testator.
5. It is further argued by Mr. Das that after the death of the predecessor-in-interest of the present revisionists, the present revisionists could be able to contact with their newly appointed lawyer only at the end of the outbreak of the COVID which is why delay has been caused in obtaining the certified copy of the said three registered Wills and to file petition for amendment of written statement at a belated stage.
6. It is further contended on behalf of the revisionists that the learned trial Court while passing the impugned order has miserably failed to visualize the

predicament of the substituted defendant nos. 2(a) to 2(c) and thus, misdirected himself in passing the impugned order refusing to allow the application for amendment which according to Mr. Das, learned advocate for the revisionists is very much necessary for effective adjudication of the trial as pending before the learned trial Court and to arrive at a just decision.

7. *Per contra*, Mr. Sarkar, learned advocate for the plaintiffs/opposite parties, however, contended that the learned trial Court is very much justified in passing the impugned order inasmuch as the said alleged three Wills are not at all relevant for effective adjudication of the suit for probate since according to Mr. Sarkar, it is settled principle of law if there are multiple Wills, the last Will will prevail as per the provision of Indian Succession Act, 1925.
8. It is further argued by Mr. Sarkar that the present revisionists being the substituted defendant nos. 2(a) to 2(c) have also failed to assign sufficient and cogent reason for filing the application for amendment of written statement at a belated stage that is at this stage where the recording of evidence of P.W.s were going on. It is, thus, submitted that the instant application is frivolous and the same may be dismissed *in limine*.
9. Mr. Sarkar, in course of his submission places his reliance upon a reported decision in ***Meena Pradhan & Ors. Vs. Kamla Pradhan & Anr.*** reported in **2023 LiveLaw (SC) 809**. It is

contended by Mr. Sarkar, learned advocate for the plaintiffs/opposite parties that in the reported decision of ***Meena Pradhan & Ors. (supra)*** it has been held by the Hon'ble Apex Court that it is the last Will which is required to be taken into consideration while granting probate.

10. This Court has meticulously gone through the entire materials as placed before this Court, this Court has also given its due consideration over the submissions of the learned advocate for the contending parties. This Court has also perused the reported decision as cited from the Bar.
11. On conjoint perusal of the photocopy of the written statement as filed by the defendant no. 2 being the predecessor-in-office of the present revisionists and the petition for amendment as filed by the present revisionists before the learned trial Court, it reveals to this Court that it is one of the defence cases that taking advantage of the stay of the testator at the first floor, plaintiffs captured all the documents of the said testator even his previous Will. In the first two paragraphs of the application for amendment, it appears to this Court that the substituted defendant nos. 2(a) to 2(c) have categorically mentioned as to how and when they came to learn about the existence of the three registered Wills dated 23.05.1989, 09.09.1995 and 17.07.1998 as executed by the testator and after obtaining the certified copy of the said Wills,

they were advised by their newly appointed advocate to make such amendment.

12. The existence of previously executed three registered Wills *prima facie* appears to be material facts for effective adjudication of the suit and whether such facts can be considered as suspicious circumstances are to be decided by the learned trial Court at the time of passing of the judgment after recording evidence both oral and documentary.
13. In considered view of this Court, learned trial Court while passing the impugned order, has not only failed to visualize the reason assigned by the substituted defendant nos. 2(a) to 2(c) in not filing their application for amendment prior to commencement of trial but also learned trial Court has prejudged himself in coming to a conclusion that it is the last Will and no other previously executed Wills are relevant for effective disposal of the said suit.
14. In view of the discussion made hereinabove, this Court thus considers that the learned trial Court is not at all justified in rejecting the prayer for amendment as filed the substituted defendant nos. 2(a) to 2(c).
15. Consequently, the instant revisional application is hereby allowed.
16. Consequently, the petition for amendment as filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure as filed by the substituted defendant nos. 2(a) to 2(c) stands hereby allowed on contest. The substituted defendant nos. 2(a) to 2(c)

are hereby directed to file their amended written statement positively within a period of fortnight from the date of passing of this order.

17. It is reported that the evidence of the P.W. s are going on. Since the amendment has been allowed at the stage of the evidence of plaintiff's witnesses, the learned trial Court shall permit P.W.s to file their supplementary and/or additional examination-in-chief(s) in the light of the amendment as allowed by this Court and to that extent the substituted defendants are hereby prohibited to raise any objection.
18. Considering the fact that O.S. No. 54 of 2012 is pending for a considerable length of time, learned trial Court is hereby directed to proceed with the suit being O.S. No. 54 of 2012 in *de die in diem* manner without granting unnecessary adjournment to the either sides and shall positively conclude the said trial within six months from the date of communication of this order.
19. With the aforementioned observation, the instant revisional application being **CO 2123 of 2023** is disposed of.
20. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)