

01.05.2024
Sl. No.22(DL)
srm

C.O. No. 2885 of 2023

Gita Basak & Ors.

Versus

Srikanta Basak & Ors.

Mr. Ramdulal Manna,
Mr. Debabrata Kundu,
Mr. Sayan Mukherjee

...for the Petitioners.

Mr. Kousick Dey,
Mr. Debnath Mahata

...for the Opposite Party No.1.

1. In the 2nd line of 1st paragraph and the 2nd line of 3rd paragraph of the order dated April 2, 2024, the Probate Case No.54 of 2011 be corrected as "Probate Case No.54 of 2012".
2. In the 3rd line of 1st paragraph of the said order, 4th Bench be corrected as "5th Bench".
3. Let this order be treated as a part of the original order dated April 2, 2024.
4. The other parts of the order remain unaltered.
5. The department is directed to take steps accordingly.
6. The order dated May 8, 2023 passed by the learned Judge, 5th Bench, City Civil Court at Calcutta, in O.C. No.11 of

2016 arising out of Probate Case No.54 of 2012 is the subject matter of challenge in this revisional application.

7. By the said order, the learned court rejected an application for recalling of the order dated November 15, 2021. By the order dated November 15, 2021, an application for amendment of the affidavit of assets filed in connection with probate application by the opposite party No.1 was allowed to be corrected. Instead of Nabadwip property, the Kolkata property was allowed to be incorporated.
8. Mr. Manna, learned Advocate appearing on behalf of some of the defendants submits that the application for amendment was allowed *ex parte*. The petitioners could not contact their learned Advocate. Subsequently, the learned Advocate passed away. Thus, the order allowing such amendment was not only barred by the proviso to Order VI Rule 17 of the Code of Civil Procedure, but also barred on the ground of denial of principles of natural justice.
9. Mr. Manna further submits that the incorporation of the Kolkata property in place of Nabadwip property changes the nature and character of the suit and also changed the trend of evidence of the parties. Thus, such order ought to have been recalled by the learned court on the prayer of

the petitioners when they appeared after the pandemic was over and prayed for reconsideration.

10. Mr. Dey, learned Advocate appearing on behalf of the propounder of the Will/the opposite party No.1 submits that there were two Wills. One with regard to the Nabadwip property and other with regard to the Kolkata property. The probate suit was filed before the learned City Civil Court at Calcutta, with regard to the Will in respect of the Kolkata property. The propounder of the Will, i.e., the opposite party No.1 deposed as a PW1. One of the attesting witnesses proved the Will. The Will with regard to the Kolkata property was exhibited and marked. Thus, the correction of the mistake was inevitable and no prejudice had been caused to the petitioners.

11. As Mr. Manna submits that initial order allowing amendment was passed *ex parte* and ought to have been recalled, this Court has allowed Mr. Manna to make elaborate submissions also on the propriety of the amendment. The application for amendment which is at pages 127 to 129 have been placed before this Court. The opposite party No.1 sought deletion of the description of the property in the affidavit of asset which was accompanying the Will and for insertion of the property at

premises No.75, Baithakkhana Road, Kolkata-700009, Jewellery, etc.

12. The Will which has been marked as an exhibit and the probate of which has been sought for in the suit, has been placed before this Court by Mr. Manna. It appears that the Will was in relation to the property which was situated at 75, Baithakkhana Road, Kolkata-700009. Thus, it is obvious that there was an apparent mistake in the affidavit of assets and the property mentioned in the Will was inadvertently not included in the affidavit of assets in view of the confusion between the two Wills of the testator.

13. Thus, the amendment did not amount to changing the nature and character of the suit or changing the scope of the suit.

14. The first issue argued by Mr. Manna is answered in the negative.

15. Next question which has been raised by Mr. Manna is that the amendment would change the trend of evidence. From the examination-in-chief and cross-examination of the propounder and attesting witness it appears that chief and cross are with regard to the property situated at 75, Baithakkhana Road and 91/1B, Baithakkhana Road,

Kolkata-700009. The cross-examination of the PW1 at pages 120 and 121 clearly records that questions were asked by Mr. Manna's client with regard to Baithakkhana Road property.

16. Under such circumstances, this Court does not find that any error of law had been committed by the learned court in allowing the amendment. A bona fide mistake was sought to be corrected, which neither changed the nature and character of the suit nor changed the trend of the evidence.

17. The Will was proved and marked as exhibit. Mr. Manna's client also contested the proceeding on the basis of the Kolkata property and questions have also been put to the witnesses on the basis of the Kolkata property.

18. However, in the view of the inordinate delay in detecting such mistake, the petitioners should be indemnified with cost. Thus, cost of Rs.15,000/- to be paid by the opposite party No.1 to the petitioners through their learned Advocate in the learned court. The learned court has already allowed filing of additional written statement. Such time is extended by four weeks from date.

19. The suit shall be expedited and disposed of within four months upon being satisfied that the cost has been paid.

20. The revisional application is, thus, disposed of.

21. There shall be no order as to costs.

22. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)