

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

BEFORE:

**The Hon'ble Justice Soumen Sen
And
The Hon'ble Justice Uday Kumar**

F.A. No. 237 of 2013

**Moni Mohan Paul
Vs.
Sovarani Paul & Ors.**

For the Appellant	: Mr. Sarajit Sen, Adv. Mr. Sambhu Nath Sardar, Adv.
For the Respondents	: Mr. Rwitendra Banerjee, Adv. Mr. Dulal Ch. Sarkar, Adv. Mr. A. Mukherjee, Adv.
Hearing Concluded On	: 6 th October, 2023
Judgment On	: 4 th January, 2024

Uday Kumar, J.:-

1. This appeal has been preferred against the judgment and order dated 30.04.2013 passed by Additional District Judge, 13th Court, South 24 Parganas at Alipore (in short, the Ld. Trial Court) in Revocation Case Number 153 of 2005.
2. The facts of this appeal enumerate that testator Durgapada Paul died on 3rd November, 1988, leaving behind his wife Radha Rani Paul, son Moni Mohan Paul and five daughters namely Sova Rani Paul, Biva Rani Paul, Niva Rani Paul, Mina Rani Paul, Monju Rani Paul and relatives as his natural heirs and legal representatives. On 31.04.1990, about two years after his death, the appellant filed an

application U/S 264 of the Indian Succession Act 1925 (herein after referred as, the Act) before Civil Judge (Senior Division) 10th Court Cum District Delegate, South 24 Parganas at Alipore (herein after referred as, the Probate Court), for grant of probate to an unregistered Will, claimed to have been executed by Durgapada Paul on 21.11.1984. Ld. Probate Court has granted probate on 26th April 2004 in Act XXXIX (Probate) Case No. 148 of 1990 (in short, the probate case). Based on the said order, the appellant prayed for mutation of his name against scheduled immovable properties under the Will before BL & LRO Sonarpur, upon which a mutation case being number 42/1549/B.L/S.M.P/ dated 11/04/2005, R.I. Kalikapur 701 Kalikapur 2/05 dated 18.08.2005, was started and notices to the legal heirs and legal representatives of testator Durgapada Paul were issued from his office. Only then, the respondents came to know everything about the Will and its exparte order of Probate.

3. Being aggrieved by said order, respondents Sova Rani Paul, Mina Paul, Monju Paul and Gautam Paul prayed for revocation on the ground that-
 - i. Durgapada Paul had never executed any Will in his life time and the alleged Will was fraudulently manufactured by appellant because the attesting witness Ranjit Kumar Paul denied his signature on the Will and on deposition of PW1 recorded in his name before the probate court. Respondents also denied their signatures appearing on the 4th page of Will as confirming party and signatures on another related documents claimed by appellant to have been signed by them.

- ii. The exparte order of probate was obtained by the appellant without service of notice on legal heirs of the testator and did not substitute Gautam Paul, the legal heir of his deceased sister Niva Paul, in the probate proceeding.
4. Ld. Trial Judge has revoked the said exparte order of Ld. Probate Court on contest in Revocation Case no.153 of 2005. Hence this appeal.
5. Mr. Sarajit Sen, Ld. Advocate for appellant submitted that Durgapada Paul, the father of appellant had executed an unregistered Will on 21st November 1984 in presence of attesting witnesses Ranjit Kumar Paul Sachindra Nath Das and his daughters, by which he bequeathed his properties in favour of the appellant /son Moni Mohan Paul. His daughters put their signatures on the Will as confirming parties. One attesting witness Ranjit Kumar Paul deposed as PW1 before the Probate Court where he clearly identified his signature on Will which was denied by him before the trial court adduced as PW5. He also denied his signature “on the Will” “on deposition of PW1” and “on verification of a consent petition and vakalatnama”, deliberately to create doubt in the proceeding. Based on his evidence Ld. Trial Court has revoked the impugned order without considering that the evidences having inherent contradiction, should not be relied upon without further proof. Subsequent denial from earlier statement is neither relevant nor reliable in evidence. It shows that Ld. Trial Judge has committed error by passing impugned order on such unreliable evidences, particularly when the respondents did not challenge the genuinity of the Will in his revocation petition.

6. He further submitted that Ld. Trial Court committed mistake to hold that notices on respondents were not served, however it appeared from service report that a notice of probate proceeding was issued to respondents at their parental address, and was duly received by Radharani Paul on 19.06.1990, in presence of villager Babulal Paul. In addition to that Ld. Trial Court has also not considered the fact that a publication of general citation was made in a widely circulated Bengali newspaper 'AAJKAL' of 28th February 2004 edition, for general information to persons having any interest in the scheduled property. Despite that, Ld. Trial Court has wrongly held that respondents had no information of this proceeding. The probate was rightly granted by Ld. Probate Court and the impugned order was deserved to be set aside.
7. Conversely, Ld. Advocate for respondents Mr. Rwitendra Banerjee, as submitted that Ld. Trial Court has passed proper order considering the evidences before him. PW5 clearly denied his signature on the Will as attesting witness and "on the deposition of PW1 recorded in his name". He admitted that he was never examined before Ld. Trial Court regarding any Will. Similarly, respondents also denied their signature on Will as consenting parties, on Vakalatnama and consent petition. They were not specifically cross examined on this point. The trial court did not find anything unreasonable or contradictory. He further submitted that the probate was granted to Appellant without proper service of notice to respondents. Appellant admitted that Gautam Paul was not substituted in the probate proceedings after death of his mother Niva Paul on 01.09.1999. Nothing revealed from the service

report that respondents were informed about the probate proceedings. Such contradictions in evidence create doubt in the valid execution of Will and proper proof of the Will. Appellant failed to dispel the thick cloud of doubts. Thus, Ld. Trial Court has rightly revoked the order of Ld. Probate Court. He had shown his reliance on the ratio decided in *Southern Bank Ltd. Versus Ganeriwalla and Ors.* AIR 1958 Calcutta 377 and AIR 1964 Calcutta 34.

8. The moot question which appeared in this appeal for determination are that: -

- a. whether the signature of attesting witness Ranjit Kumar Paul on the Will, on the deposition of PW1 and on another related documents, claimed to have been signed by him, is genuine or not?
- b. Whether signature of respondents on Will as confirming parties and on another related documents claimed to have been signed by them are genuine or not?
- c. Whether proper notice of the probate proceeding was validly served on legal heirs of testators including respondents or not?
- d. Whether the impugned order suffers from any irregularity or not?

9. In any event, the revocation of grant of probate under Section 263 of The Indian Succession Act, 1925, is in question in this appeal, which provides for revocation or annulment of grant of probate or letters of administration for just cause. Just cause is explained as

Just cause shall be deemed to exist where—

- (a) The proceedings to obtain the grant were defective in substance; or*
- (b) The grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or*
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or*
- (d) The grant has become useless and inoperative through circumstances; or*
- (e) The person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.*

Illustrations

- (i) The Court by which the grant was made had no jurisdiction.*
- (ii) The grant was made without citing parties who ought to have been cited.*
- (iii) The Will of which probate was obtained was forged or revoked.*
- (iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.*
- (v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.*

(vi) Since probate was granted, a latter Will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

10. It is fact that the genuinity of Will and sanctity of the probate order need to be assessed only to the extent necessary to determine the issues raised in the revocation application. The main issues raised in the revocation application is-

- i. whether the signature of attesting witness and respondents on Will and their signatures on another related documents claimed to have been signed by them, are genuine or not.
- ii. whether the exparte order of probate was passed by Ld. Probate Court without ascertaining proper service of notice on all legal heirs and legal representatives of the testator.
- iii. Whether the proceeding to obtain the grant of probate was defective in substance and the grant was obtained by making a false suggestion to court and by concealing material facts from court.

11. In respect of the signature of attesting witness and respondents on the Will and their signatures on another related documents claimed to have been signed by them, are genuine or not, we are required to see Section 63 of Indian Succession Act 1925 which provides that every

testator, shall execute his unprivileged Will according to the following rules: —

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

12. As per section 63 (C) of the Act, the Will is required to be attested by two witnesses. Such documents shall only be proved as per section 68 of the Evidence Act, which provides that *“If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. [Provided that it shall not be*

necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]”

12a. If a document is required by law to be attested, it shall not be considered in evidence until one attesting witness, at least has been called for the purpose of proving its execution. It mandates that if an attesting witness to a 'Will' is alive then necessarily the 'Will' is to be proved by examining that attesting witness. Since the Probate Court is the court of conscience, so he is under obligation to assure the strict compliance of the legal provisions.

13. In view of the above statutory guidelines, an attesting witness to the Will Ranjit Kumar Paul had adduced his evidence before the Probate Court on 26.04.2004 as PW1, wherein he stated that *“I was present at the time of execution of Will. Except myself, all confirming parties of the Will were present...”* and *“this is the said Will wherein Durgapada Paul put his signature and it bears the signature of myself as well as of another attesting witness Sachindra Nath Das. The Will also bears signature of confirming party of the Will. This is the said Will marked as Exbt. 1.”* Another attesting witness Sachindra Nath Das was not alive.
14. The contrary was deposed by him in Revocation Case 153 of 2005 as PW5 in connection with Revocation Case 153 of 2005, Ranjit Kr. Paul admitted in his cross-examination that *“I did not depose in connection with the Will of Durgapada Paul in any court”* and *“this is not my signature on the evidence sheet of PW1 examined on 26.04.2004 in Act*

XXXIX Case No. 148 of 1990 (p) before the court of the District Delegate, South 24 Parganas.” When original Will was handed over to him he specifically stated that *“this is not my signature on the last page of the Will as witness.”* The appellant did not cross-examine him on this point. Such material contradictions are vital in nature to raise suspicion on the probate of will. Relying on such facts and circumstances, the Trial Court has rightly revoked the probate order dated 26.04.2004.

15. Moreover, PW5 also admitted that *“I know the signature of my wife. This is not the signature of my wife Manju Paul in sl. No. 5 of the attesting witness.”* Similarly, his wife Manju Paul was examined as PW3 in which she corroborated the statement of PW5. She admitted that *“I did not put my signature in this Will. The signature of Manju Paul as appears in this Will is not mine. I have not seen the Will earlier.”* In this regard PW1 Mina Paul admitted that *“I find signatures of my sisters in a no objection petition dt. 30.04.1980. It was filed in the original probate case. I did not put my signature on vokalatnama filed on 30.04.1990 by adv. Arijit Kumar Biswas. The signature appears in this vokalatnama as Mina Paul is not my signature.”* Similarly, PW2 Shovarani Paul admitted that *“this is not my signature as appears in the last page of the alleged Will.”* Indubitably, such denial is material in nature and are sufficient to annihilated entire edifices of appellant stands taken in this appeal.
16. Therefore, Ld. Advocates for both sides given their consent to refer the signatures to any hand writing expert for their examination by

comparison with admitted signature and submit report so that proper justice can be administered to the parties.

17. In view of the above facts, we perused the documents upon which the signatures of witnesses are claimed to have been not genuine and we physically compared the signature of Ranjit Kumar Paul made “on the Will as attesting witness”, “on the verification of consent petition filed by Appellant before probate court”, “vakalatnama dated 06.02.1990 and signatures of respondents” on 4th page of the Will as confirming party, on consent petition filed by appellant before the probate court, and on vakalatnama dated 30.04.1990 with their genuine signatures and we noticed dissimilarities in them.
18. Accordingly, we decided to send those signatures to F.S.L Kolkata for scientific examination of signatures and report for proper determination of this issue. So, we directed to send their signatures appearing on the unregistered Original Will dated 21st November 1984, the original probate application filed before the 10th Civil Judge Senior Division, Alipore, the original Vakalatnama dated 6th of February 1990 in favour of Avijit Krishna Biswas alleged to have been executed by Radharani Paul, Sovarani Paul Vibharani Paul, Nibharani Paul, Mina Paul and Manju Paul, the original deposition dated 26th April 2004 alleged to be of PW1 Ranjit Kumar Paul, the Vakalatnama Dated 4th October 2005 in favor of R.R. Barik, advocate executed by Savarani Paul, Gautam Paul, Meena Paul and Manju Paul, the original consent petition claimed to have been filed in the probate proceeding which bear the signature of Radharani Paul, Sovarani Paul Bivarani Paul, Nivarani Paul, Mina Paul and Manju Paul all in Bengali, the original

deposition of Savarani Paul and Manju Paul by way of an affidavit under order 18 rule 4 of the C.P.C along with the original deposition of the of said three persons, the original application for revocation case no. 153 of 2005 duly signed by Savarani Paul, to the Director, Central Forensic Science Laboratory at Beniapukur Kolkata -14, for examination of signatures with admitted or sample signatures by experienced Handwriting and Forensic Expert and submitted the opinion on the following points-

- i. Whether the signature of Ranjit Kumar Pal appearing in the original Probate application and on the reverse page of deposition recorded on 26th April 2004 by the Ld. Judge and the signature of Ranjit Kumar Paul in Bengali appearing at the last page of the original will are of one and the same person?
 - ii. Whether the signature of Sovarani Paul, Bivarani Paul, Nivarani Paul, Mina Paul and Manju Paul appearing at the last page of the original Will and at the original Vakalatnama dated 4th October 2005 are made by same person.
 - iii. the signatures mentioned in the original Vakalatnama dated 6th February 1990 alleged to have been executed by Radharani Paul, Sovarani Paul, Bivarani Paul, Nivarani Paul, Mina Paul and Manju Paul are of the same persons.
19. In compliance of the said direction, the Central Forensic Science Laboratory has submitted his report in sealed envelope vide his letter CFSLKOL /846 / QD 144 / 23 / DXB- 4 / 2023/ 1906 dated 20th September 2023 and the said report was placed before us on 25.09.2023.

20. On forensic examination of the documents the Assistant Director and Scientist see document opined as follows:

“2. The person who wrote the blue enclosed signatures stamped and marked v-AS, vii-AS1 to vii-AS10 and viii-AS1 to viii-AS17 did not write the red enclosed signature similarly stamped and marked iii-AQ.

3. The person who wrote the blue enclosed signatures stamped and marked v-BB and viii-BB1 to viii-BB8 did not write the red enclosed signature similarly stamped and marked -BQ.

4. The person who wrote the blue enclosed signatures stamped and marked v-CS and viii-CS1 to viii-CS8 did not write the red enclosed signature similarly stamped and marked iii-CQ.

5. On inter-se comparison of the English signatures marked ii-DQ (executed in the year 1990) and iv-DQ (executed in the year 2004), sufficient handwriting characteristics could not be extracted so as to opine regarding their common authorship or otherwise.

The signature marked -DQ is in Bengali script and as such not comparable with the English signatures marked ii-DQ and iv-DQ.

An attempt could be made for further examination if some contemporaneous admittedly genuine signatures of "Sh. Ranjit Kumar Paul" preferably for the period 1981 to 1987 in Bengali script and for the period 1987 to 1993 and 2001 to 2007 in English be available.

6. It has not been possible to express any opinion regarding the authorship of the disputed signatures marked i-AQ & vi-AQ; I-BQ, vi-BQ1 & vi-BQ2; i-CQ & vi-CQ in comparison with the respective standard signatures marked v-AS, vii-AS1 to vii-AS10 & viii-AS1 to viii-AS17; v-BB & viii-BB1 to viii-BB8; v-CS & viii-CS1 to viii-CS8 respectively as all the handwriting characteristics occurring in the disputed signatures are not similarly and cumulatively accounted from the respective standard signatures.”

21. From the aforesaid opinion it appear that the signature of Sova Rani Paul in the revocation application is not similar to the Vokatnama alleged to have been executed by Sova Rani Paul on 6th

February, 1990 forming part of the original probate application similar is the case with Mina Paul and Manju Paul. However, the report is not conclusive with regard to the signature of Shri Ranjit Kumar Paul. Even if, we assumed that there is no conclusive report with regard to the signature of Ranjit Kumar Paul who alleged to be one of the attesting witnesses and claimed to have deposed at the time of grant of probate but later, on a revocation application denied his signature and his presence in court as one of the attesting witnesses, there are enough suspicious circumstances concerning the execution of the Will as pointed out by Mr. Rwitendra Banerjee, the learned Counsel appearing on behalf of the respondents which justify revocation of the grant. When the attesting witness has denied his signature and presence at the time of execution of the Will it is open for the appellant to prove the Will by other means and calling presence who may have witnessed the execution of the Will or had prepared the Will. The signature of the respondents on the alleged Will and the various documents relied upon but the Court of Probate to demonstrate that all have consented to the grant and have signed the last page of the Will were not proved in view of clear assertion by Mina, Manju and Sova Rani that they were not present at the time of execution of the Will and it was also significant to find different inks used at the last page to create an impression of a Will duly acknowledged by all the legal heirs. The use of different ink also could not be explained.

22. The report reveals that *“the questioned and standard signatures in respect of opinion 2, 3 and 4 do not belong to the same general class as indicated by the fundamental differences in handwriting characteristics*

of skill, speed, overall size and proportion letters and characters and spacing between the letters and characters as the aforesaid differences are fundamental in nature and beyond the range of the natural variation of the writer.” Considering the fundamental differences without any characteristic similarities in the execution of letters and characters the expert concluded that the signatures are not found similar after comparison with the specimen signatures of the applicants.

23. The findings of C.F.S.L. are conclusive and substantial in nature.

Therefore, we can draw safe conclusion that the contention of respondents that the Will was not proved in consonance with the mandatory provisions of the law, is correct. It was granted by Probate Court without examination of any attesting witness while Ranjit Kumar Paul was alive. Without examination of at least one attesting witness, no Will can be proved as per Section 68 of the Evidence Act. It is established from his evidence that there were latches in proof of Will. Same view has been expressed by our High Court in *Southern Bank Ltd. Versus Ganeriwalla and Ors.* AIR 1958 Cal 377, it was held that *‘in the event the Will is prepared and executed in circumstances which raise the suspicion, the probate ought to be revoked’.*

24. In view of the report of hand writing expert, misleading and false suggestion with regard to the involvement of all the legal heirs and their participation we are of the view that the trial Court has rightly held that mandatory provisions necessary for proof of Will were not complied by the Ld. Probate Court in the probate proceeding.

25. We have perused the service report of notice issued u/s 283 of the Act on 08.05.1990 to Radha Rani Pal, Sovarani Pal, Biva Pal, Niva Pal, Mina Pal and Manju Pal at Village Jafarpur, P.O Champahati, P.S Sonarpur, District South 24 Parganas, to ascertain whether it was served on them or not. They were directed to appear before the court at Alipore, on 26.07.1990 in connection with the hearing of Act XXXIX Probate Case 148 of 1990. Radharani Paul received the notice on 09.06.1990, in presence of a villager Babulal Paul. There was nothing on record to show that whether respondents were intimated about the proceeding. However, PW1 to PW5 have admitted in their cross-examination that no notice of probate proceeding was ever served on them. No contrary evidence was brought on record by appellant to controvert it, rather DW1 had admitted in his cross examination that *"I do not know if any summons under registered post was sent to my sisters."* and that *"I cannot properly say as to whether my mother received the summon of the present petitioner i.e., my sisters in respect of this case."* It revealed that appellant was not sure about service of summon on respondents. Such admission strengthened the contention of respondent that no notice of probate proceeding was served on them nor they had any knowledge of execution of the Will by Durgapada Paul. Respondents came to know about it in 2005 only after receiving a notice from the office of B.L. & L.R.O. Sonarpur, sent to them in connection with the mutation case filed by appellant after getting probate. This was admitted by PW2 and also affirmed by DW1. Said notices of B.L. & LRO office were available on record.

26. Further it was on record that during proceeding of probate, one of the legal heirs of testator Niva Paul died on 01.09.1999, leaving behind her son Gautam Paul but this fact was not intimated to Court by Appellant nor any step was taken by him to substitute Gautam Paul in the proceeding. He admitted in his cross examination as DW1, that “*I do not know what my Lawyer has done in this case because I am not conversant with the legal matter regarding substitution of the legal heir of Niva Paul.*” He also failed to give any explanation as to the use of different ink for writing of Will and why the Will was not registered. On this issue our High Court has expressed that “*persons claiming to have interest in the estate of the deceased ought to be put to notice in terms of the statute*” in AIR 1964 Cal 34.
27. The cumulative effects of the evidences on record in relation to the doubtful execution of Will and its proof before the probate court, incomplete service of summon, non-substitution of legal heir of Niva Paul on her death during pendency of the probate proceeding, no explanation was advanced as to doubts left in the Will, which create suspicions in respect of proper grant of probate of a Will by Probate Court, and so is deserve to be revoked.
28. Certainly, such defects are sufficient to raise suspicions. Suspicions affect the genuinity of the probate proceeding. It was the duty of the appellant to take endeavor to remove the suspicions, but he failed. We conclude that the probate of will was not granted properly.
29. Therefore, Ld. 13th Additional District Judge, Alipore has- correctly revoked the grant of Probate made in favour of Appellant by Probate

Court. We do not find any perversity in the impugned order. The order of Ld. 13th Additional District Judge, Alipore is hereby affirmed.

30. The appeal stand dismissed. There shall be no order as to costs.

31. Interim orders, if any, is stand vacated.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)