

IA No. GA 1 of 2024
APOT No. 27 of 2024
with
TS No. 7 of 2022
IN THE HIGH COURT AT CALCUTTA
In appeal from its
TESTAMENTARY & INTESTATE JURISDICTION
CIVIL APPELLATE JURISDICTION

In the goods of:
Bhagirath Kajaria (Deceased)
And
Bimal Kajaria
Versus
Anoushka Kajaria

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 6th February 2024

Appearance:
Mr. Soumabho Ghose, Advocate
Ms. Bolivia Roy, Advocate
for the appellant

Mr. Nilay Sengupta, Advocate
Mr. Altamash Alim, Advocate
Mr. Sujit Banerjee, Advocate
for the respondent

Mr. Subhadip Chakraborty, Advocate
Mr. Souvik Dian, Advocate
for the applicant

The Court: We admit the appeal.

Taking into account the fact that admission and hearing of the appeal by following the usual procedure would take considerable time and the point involved is very short, we propose to dispose of it dispensing with all formalities.

The subject matter of this appeal are certain amendments proposed by the caveator in his affidavit in support of the caveat. This affidavit was filed in March, 2022. The amendments were proposed by an application made in 2023 (GA No. 5 of 2023).

The proposed amendments have been rejected and the application dismissed by the learned single judge by his judgement and order dated 22nd August 2023.

The amendments proposed are as follows :

“16A. I shared a very cordial relation with my father. Father used to tell me everything about our Salt Lake property. Since purchasing the said plot, it was me and my father who took active part in construction of the building. The property papers were always remained in the custody of my father. It was after his death, that my younger brother had forcefully taken custody of all property papers.

16B. At no point of time father had expressed his intention to execute any Will or had ever informed me about the execution and registration of any alleged Will.

16C. The alleged Will does not contain the signature of my deceased father.

16D. Alternatively, the signature of the deceased appearing on the said alleged will has been forged.

16E. In the still further alternative and in the event it is being held that the said alleged Will did contain signature of the deceased, I say that the deceased had not signed the said document knowing the same to be his Will or with the intention of executing a Will. The petitioner had used his proximity to obtain the signature of the deceased on blank documents and has converted them to the alleged Will.

16F In still further alternative, my younger brother Piyush Kajaria in conspiracy and connivance with the alleged attesting witnesses had caused the said instrument to be manufactured or obtained an ascendancy over the mind of the said deceased and has obtained the signature of the deceased on the document, by undue influence. The deceased did not sign the

alleged Will with understanding or appreciation. My younger brother had abused his fiduciary duty towards the deceased by causing the Will. My brother had caused the alleged Will to be made.

16G. It is unthinkable that my father will not tell me about the execution of the Will. It is also highly suspicious that the existence of the Will was unknown to me till the petitioner called me one after for my consent to the grant. Even a copy of the Will was not given to me.

16H. In further alternative, the execution of the alleged Will is shrouded by suspicious circumstances. The alleged attesting witnesses had not signed the instrument in the presence of the deceased. Nor the testator had executed the alleged Will in presence of the attesting witnesses. The alleged attesting witnesses are persons in control of Piyush Kajoria and their independence always doubted.

16I. The application for Grant of Probate as it stands is not maintainable in law as well as in the facts and circumstances of the instant case.”

The learned judge, while dismissing the application, has observed –

“.....on a comparative analysis of the original pleading with the proposed amendments as aforesaid it is clearly evident that introduction of the case by way of proposed amendment will not only cause prejudice to the plaintiff but is likely to change the dimension of the suit by introduction of new points of defence. Moreover, by allowing such amendments the provisions of Order VIII of the CPC will be rendered otiose. There will be no end to the pleading if amendments as proposed by the defendant are permitted to be introduced. The whole basis of admission and denial and specific

pleading of one's case as laid down in Order VIII of the CPC will be rendered inconsequential."

Our view is as follows:

The foundation of the defence, the caveator proposes to introduce by amendments, is already there in the affidavit in support of the caveat. In paragraph 6 the will is described as "unnatural and suspicious"; in paragraph 14 it is stated that the "will was not at all made by my deceased father and the averments made therewith have not been made by my father"; in paragraph 16 it is asserted that the will is inter alia a product of undue influence and coercion.

Therefore, we do not think that the nature of the case or defence is sought to be changed or that the caveator is trying to retract from his earlier defence and set up something different. Moreover, the proposed amendments could well have been adduced by evidence proving the facts pleaded in the affidavit in support of the caveat.

Mr. Niloy Sengupta, learned advocate appearing for the respondent submits that this application is an attempt to delay the proceeding for grant of probate.

We take note of this submission and expedite the suit after allowing the amendments, as prayed for.

We direct that the amendments, as sought in the application being GA/5/2023, shall be carried out by the department within two weeks of communication of this order. A copy of the amended affidavit is to be furnished by the appellant's advocate-on-record to the respondent's advocate-on-record within one week thereafter.

We are informed that the suit is ready for hearing in every respect. We direct the suit to be listed before the learned

judge taking up suits after four weeks with a request to the learned judge to try and determine it as expeditiously as possible.

The appeal and the connected application (GA/1/2024) are disposed of, setting aside the impugned order.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose/K. Banerjee