

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

PRESENT:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Supratim Bhattacharya

FA 221 of 2011

Deb Kumar Bose

Vs.

Prithudipti Maity and Ors.

For the Appellant : Mr. Sudhakar Biswas

For the Respondents : Mr. Saptangsu Basu

Mr. Balaram Patra

Mr. Suvadip Bhattacharjee

Heard On : 28.08.2023

Judgement Delivered On : 24.11.2023

Supratim Bhattacharya, J.:-

1. The instant appeal arises out of the Judgement and Decree passed by the Ld. Additional District Judge, 4th Court Paschim Medinipur in Other Suit No. 14 of 2002, dated the 17th day of March 2008, wherein the said Ld. Judge has been pleased to dismiss the suit on contest

with cost of Rs. 5000/-. The said Ld. Judge has been pleased to reach to the conclusion that the 'Will' in question in respect of which probate has been sought for is forged and fabricated and it has been prepared after the death of the testatrix namely Giribala Maity.

2. The appellant herein namely Deb Kumar Bose being the executor appointed by the testatrix of the impugned 'Will' had prayed for granting of probate before the Ld. District Delegate at Medinipur.
3. Smt. Mira Maity, wife of Dilip Kumar Maity since deceased, being the wife of the eldest son of the testatrix objected to the prayer for granting of probate in respect of the said Will. On being objected the probate proceeding became contentious and ultimately the probate application has been heard by the Ld. Additional District Judge, 4th Court Paschim Medinipur.
4. The property involved in the *lis* belonged to the said Giribala Maity which she had partly purchased and partly obtained through a Title Suit, judgement of which had been passed by the Ld. Civil Judge Sr. Divn. 1st Court Medinipur. The contention of the appellant/petitioner is that the executrix executed the said Will during her lifetime on 05.03.1997 in favour of Dipak Kumar Maity (son), Dipankar Maity (son), Himkona Roy (married daughter), Mira Maity (wife of Dilip Kumar Maity, the eldest son of the executrix), Monika Maity (wife of Dipak Kumar Maity) and Mousumi Maity (wife of Dipankar Maity).
5. Through the said application praying for probate it has been stated that the impugned Will was executed by the testatrix in presence of the witnesses, being written by Jugal Kishore Das as per the

instruction of the testatrix. The impugned Will has been authenticated by Notary Public. The appellant/petitioner has further stated that the impugned Will was in his custody since its execution.

- 6.** The Ld. Trial Court has taken into consideration the evidence adduced by Deb Kumar Bose, the petitioner (PW1), the scribe of the impugned Will namely Jugal Kishore Das (PW2) and Prithudipta Maity (DW1) and has also gone through the said Will.
- 7.** After considering the evidence on record and the documents exhibited by the parties including the impugned Will the Ld. Trial Judge has come to the finding that the impugned Will has interpolation having mentioned the date 05.03.97 which was earlier dated 05.04.97 and the said interpolation has been made only for the purpose of showing that on that date Giribala went to Medinipur. The Ld. Trial Judge has not been convinced by such story and has stated that the interpolation simply proves that the Will in question is a procured one and that has been done by the executor with the help of this scribe.
- 8.** The Ld. Trial Judge has been of the opinion that the testatrix did not have the mental capacity nor had physical fitness to execute the said Will as she was completely bedridden because of her continuous ailment.
- 9.** The Ld. Trial Judge has also come to the finding that to grab the entire house, the said Dipak and Dipankar procured the impugned Will only to deprive the heirs of their elder brother namely Dilip Kumar Maity. The Ld. Trial Judge has also not been convinced by the fact that the said Will was placed before the Notary on 05.04.1997

after a lapse of one month of the said execution of the impugned Will by the testatrix.

The Ld. Trial Judge not being convinced by the aforementioned facts has held the execution of the impugned Will to be doubtful. Being in quest by the aforesaid facts the Ld. Trial Judge has finally reached to the conclusion that the impugned Will nothing but a forged and fabricated document and it has been prepared after the death of the executrix.

10. The Ld. Counsel appearing on behalf of the appellant during the course of exhaustive argument has submitted the following:

- i)** He has submitted that the testatrix namely Giribala Maity executed the said Will on 05.03.1997. He has further submitted that the said Will was written and prepared by the scribe namely Jugal Kishore as per the direction of the testatrix and the same was read over to her and the testatrix after going through the same had signed on the said Will in presence of the attesting witnesses.
- ii)** He also submitted that the said Will was executed by the testatrix on 05.03.1997 and the said Will is the last Will of the testatrix.
- iii)** The Ld. Counsel has further submitted that on 05.04.1997 the said Will was duly authenticated before a Notary in Medinipur town.

- iv)** The Ld. Counsel has further submitted that the testatrix appointed the appellant/petitioner as the executor of the said Will.
- v)** He has also submitted that the testatrix expired on 13.04.1997 at her residence.
- vi)** The Ld. Counsel has further submitted that the testatrix had three sons namely Dilip Kumar Maity, Dipak Maity, Dipankar Maity and one daughter namely Himkona Roy. He also submitted that through the said Will the testatrix distributed her property in favour of her two sons namely Dipak and Dipankar, daughter Himkona and the three daughter-in-laws namely Monika (wife of Dipak), Mira (wife of Dilip), and Mousumi (wife of Dipankar).
- vii)** The Ld. Counsel has further submitted that Mira Maity, wife of Dilip Maity contested the suit but she herself did not adduce evidence to substantiate her allegations of forgery.
- viii)** He has further submitted that nobody has been neglected or has been denied of his/her right.
- ix)** The Ld. Counsel has further submitted that the Will contains the entire intention of the testatrix as she thought it fit as per their respective requirement.
- x)** He has further submitted that the testatrix has not deprived anybody.

- xi)** The Ld. Counsel has submitted that Mira, the wife of Dilip only tried to malign her brother-in-law in the locality.
- xii)** The Ld. Counsel has further submitted that the Ld. Judge of the Trial Court without considering the evidence on record and without appreciating the evidence has wrongly refused to grant probate and has thus not applied his judicial mind and as such has been misdirected.
- xiii)** The Ld. Counsel has referred to the judgement of the Hon'ble Division Bench of this Honble Court which has been reported in (2016) 3 WBLR (Cal) 640.
- xiv)** The Ld. Counsel has further submitted that the authorities cited on behalf of the respondents are not at all applicable in the present case.
- xv)** Banking upon the aforesaid submission the Ld. Counsel has prayed for granting probate in respect of the Will.

11. The Ld. Counsel appearing on behalf of the respondents has appreciated the impugned judgement and has submitted the following:

- i)** The Ld. Counsel has submitted that the impugned Will is a forged one and is not at all trustworthy as because the date of its authenticity of the said Will is interpolated and is overwritten.
- ii)** He has stressed upon the point and highlighted that the second last page of the Will the date "05.04.1997" has

been overwritten and interpolated as “05.03.1997” while dealing on this point the Ld. Counsel has unequivocally stressed that the said date has been interpolated to show that the execution of the said Will has been performed on 05.03.1997 whereas in the Will itself it is apparent that there is interpolation which is not at all acceptable in case of a Will which is a very delicate and is too sensitive document.

- iii)** The Ld. Counsel has further submitted that the allegation of forgery holds and is affirmed by the interpolation of the said date.
- iv)** The Ld. Counsel has further submitted that the Will in question itself raises doubt as regards to the preparation and execution of the said Will.
- v)** The Ld. Counsel has also submitted that the preparation of the said Will is nothing but a mastermind of Dipak Maity and Dipankar Maity being in collusion with the scribe and the executor.
- vi)** The Ld. Counsel has further submitted that the testatrix was suffering from abdominal illness since long and as such she had to be treated on several occasions from her daughter’s house in Kolkata and she did not have either physical or the mental capacity to execute such a Will.
- vii)** The Ld. Counsel has further submitted that the Will in question has been manufactured not only to deprive the

wife of the deceased brother and his family members but also to grab the crux of the properties.

viii) The Ld. Counsel has further submitted that the impugned Will has been prepared in collusion with the scribe and the witnesses.

ix) The Ld. Counsel has raised the issue of suspicious circumstance and has furnished the following citations:

a) ILR Calcutta 9 226.

b) (2003) 8 SCC 567

c) AIR 1977 SC 63.

x) The Ld. Counsel has prayed for disallowing the instant appeal banking upon the aforementioned circumstances.

12. From the submission made on behalf of either of the parties it is apparent that the crux of the instant *lis* is as to whether the Will in question has been prepared, executed and authenticated in accordance with law and as to whether the impugned Will is a fabricated one or not.

13. On meticulously going through the impugned Will it is apparent that the date mentioned in 'page 6' of the said Will is overwritten which raises doubt in the mind of this Court.

14. The distribution of the properties also does not reflect a crystal clear picture of proper and just allocation. Dilip Kumar Maity the eldest son of the testatrix in spite of being alive has not been allocated any property while his other two brothers have been allocated portion of

the properties. In the said Will there is no *iota* of explanation as regards to the exclusion of the said Dilip Kumar Maity from the list of the beneficiaries. This creates enormous doubt and suspicion in the mind of this Court. Only the wife of the said Dilip Kumar Maity has been allocated some portion of the properties which is not similar to that allocated to the other two brothers who have themselves been allocated properties and in addition the wives of other two brothers have also been allocated properties while only the wife of the eldest son has been allotted property in the said Will. This discrimination also raises doubt as regards to the preparation and execution of the said Will.

15. The testatrix having been ill as is revealed from evidence, the preparation and execution of the Will in question being at the fag end of the life of the executrix also raises doubt in the mind of this Court.

16. A Will is not at all similar to any other document. A Will is a sensitive document as because this document does not have anybody to prove the said document, on the contrary a Will by itself shows its sanctity. In this instant *lis* the overwriting on the date does not only raise suspicion but attracts a black spot on the said Will. In this instant *lis* the preparation and execution of the said Will is one of the moot points. The overwriting of the date has shaken the fulcrum of the impugned Will.

17. All the signatures of the executrix on the impugned Will bear the following 'Shri Giribala Maity' in bengali written as 'শ্রী গিরিবাল মাইতি' instead of " Srimati Giribala Maity " in vernacular which ought to have

been written as “ শ্রীমতি গিরিবালা মাইতি ”. This also creates enormous doubt in the mind of this Court as regards to the signatures put on the Will by the so called testatrix.

- 18.** In this instant *lis* the preparation and the execution of the said Will in question is said to have been done on 05.3.1997 while the authentication of the impugned Will by the Notary Public is said to have been done on 05.04.1997. This gape of one month also raises question as regard to the sanctity and authenticity of the said Will.
- 19.** These vital points which are the pillars of a Will having been shaken this Court is at one with the view of the Ld. Trial Judge.
- 20.** In this context this Court cites the judgement passed by the Hon'ble Apex Court reported in (2006) 9 SCC 515, where in paragraphs no. 19 and 20 the following have been stated:-

“...19. It will be injudicious to suggest, as has been held by the learned Single Judge of the Madras High Court, that there are no suspicious circumstances surrounding the execution and registration of the Will. It is difficult to understand as to why the testatrix omitted to mention two of her sons in the Will although she has taken great pains to mention the fact that the appellant herein and her other son, Cecil Lazarus, had looked after her and had paid all the instalments towards the house property, even though Cecil Lazarus had gone to Sharjah as far back as in 1963 and only the appellant was living with her in the house being the subject-matter of the bequest in the Will. That the testatrix was of very advanced age is admitted. It is also established that she had suffered a fall and had broken her thigh bone twice and that she had to be operated on

both the occasions and that she was keeping indifferent health from after her first fall. That by itself may not be sufficient to prove that she was incapable of executing the Will, but the defendant's contention that the appellant took advantage of the mishap and the subsequent dependence of the testatrix to influence her to make the Will in his favour and in favour of another brother who was not even residing in India will have to be taken into consideration while deciding the aforesaid question.

20. Apart from the above circumstances, what is perhaps of even more significance is the existence of the two signatures on each page of the Will, said to be those of the testatrix. It may be remembered that while the Will is dated 5-7-1979 the same was registered on 7-7-1980 after more than a year. Except for the Will, no other document has been produced by the appellant to indicate that the deceased ever signed her name as Mrs M. Solomon Lazarus notwithstanding the fact that it was attempted to be explained that her middle name was Martha and that at times she signed her name as Mrs M. Solomon Lazarus and at other times simply as Mrs Solomon Lazarus. Having regard to the peculiarity of the explanation sought to be given, we examined the photocopy of the Will which was in the records and to the naked eye it is quite evident that the two signatures are entirely different and have little or no likeness whatsoever.”

21. Considering the aforesaid discussion this Court is of the view that the judgement passed by the Ld. Trial Judge does not require any interference. Thus, the judgement passed by the Ld. Trial Court stands affirmed.

22. FA 221 of 2011 stands accordingly **dismissed**.

23. Parties shall be entitled to act on the basis of the server copy of the Judgement and Order placed on the official website of the Court.

24. Urgent certified photo copies of this judgement, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree,

(Supratim Bhattacharya, J.)

(Rajasekhar Mantha, J.)