

Pramod Kumar Daga Vs. Pradip Kumar Daga

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Court : Kolkata

Decided On : Aug-12-2013

Judge : Subhro Kamal Mukherjee

Appellant : Pramod Kumar Daga

Respondent : Pradip Kumar Daga

Judgement :

ORDER

SHEET IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction
ORIGINAL SIDE GA No.2063 of 2013 APOT No.304 of 2013 PLA No.177 of 1996
IN THE GOODS OF : SURAJ NARAIN DAGA[DEC].And PRAMOD KUMAR
DAGA Versus PRADIP KUMAR DAGA For Appellant : Mr.Jishnu Chowdhury,
Mr.S.S.

Das.

For Respondent No.1.

: Mr.Dipankar Dhar.

For Respondent Nos.2 to 5 : Mr.Rudra Dhar.

For Respondent Nos.7 to 11: Mr.Pallab Mondal.

BEFORE: The Hon'ble JUSTICE SUBHRO KAMAL MUKHERJEE The Hon'ble JUSTICE ASIM KUMAR MONDAL Date :

12. h August, 2013.

The Court : Although the matter is appearing under the heading new applications., by consent of the learned advocates for the parties, the appeal itself is taken up for hearing treating the same as on days list.

All formalities are dispensed with.

This is an appeal against judgement and order dated December 21, 2012 passed by the Honble Single Judge in PLA No.177 of 1996.

By the order impugned, the Honble Single Judge removed the named executor and issued a direction on Sree Narain Daga, one of the sons of the testator, to act as the executor under the supervision of the Joint Special OfficeRs.namely, Mr.M.L.

Chatterjee, advocate and Mr.Manish Chandra Ray, advocate.

Being aggrieved, Pramod Kumar Daga has come up with this appeal.

This litigation has a chequered history.

Suraj Narain Daga executed his last Will and Testament on November 2, 1992 expecting that the disposition made by him in his Will would be accepted by his heirs without any demur.

Unfortunately, it appears to us that the parties are not interested to distribute the property in terms of the Will, but are interested to prolong the litigation.

In the said registered Will dated November 2, 1992, the said Suraj Narain Daga nominated and appointed his son Laxmi Narain Daga and his grandson Pramod Kumar Daga as the joint execut ORS.It was provided that the executors would be entitled to act jointly.

It was, further, provided that in case Pramod Kumar Daga was not willing to act, in his place Sree Narain Daga would act as the executor.

Late Suraj Narain Daga had four sons, namely, Laxmi Narain, Sree Narain, Prem Narain and Satya Narain, and one daughter.

Prem Narain was given in adoption to one Raman Lalji Daga, and as such, Prem Narain Daga had ceased to be a member of the family of the testator.

The testator, on the date of execution of the Will, was a widower and his only daughter, namely, Kashi Bai Sadani, who had expired in 1991, was given marriage in a well-established and affluent family.

Although the Honble Single Judge recorded in the order that the application for grant of probate was made by Laxmi Narain Daga alone, but our attention is drawn to page 31A of the application that the application for grant of probate was made jointly by Laxmi Narain Daga and Pramod Kumar Daga.

It seems that there was some dispute amongst the heiRs. Sree Narain Daga and Satya Narain Daga lodged caveats.

However, disputes were resolved, and the Honble Single Judge by order dated January 25, 2007 had discharged the caveats.

Initially, there were some differences between the two execut ORS. but, ultimately, on August 11, 2010, the named execut ORS. namely, Laxmi Narain Daga and Pramod Kumar Daga, jointly filed an application, which was registered as GA No.2601 of 2010, for grant of probate to them as the joint executors expressing their desire to act as the joint execut ORS. Unfortunately, before the administration of the estate could be completed, one executor, namely, Laxmi Narain Daga, died on April 23, 2011.

Consequently, on July 5, 2011, the surviving executor filed an application for amendment of the application with a prayer for grant of probate in favour of the surviving executor.

On July 27, 2012, one Pradeep Kumar Daga, son of Laxmi Narain Daga, since deceased, filed an application, which was registered as GA No.2020 of 2012, for grant of letters of administration.

Elaborate arguments were advanced before the Honble Single Judge and the Honble Single Judge by the order impugned directed administration of the estate by Sree Narain Daga as the executor.

The testator named and appointed Laxmi Narain Daga and Pramod Kumar Daga.

Initially, there might have been some disputes, but, ultimately, the joint executors agreed to act jointly.

Now, one of the joint executors died and the surviving executor is ready and willing to act as the executor.

Therefore, the Honble Single Judge ought to have allowed the application for amendment of the application for probate, as indicated hereinabove, filed by Pramod Kumar Daga and permit Pramod Kumar Daga to act as the executor.

We are of the opinion that there was no necessity for the court to remove the named executor in the Will when the surviving executor was willing to act as the executor, and to appoint Sree Narain Daga as the executor to obtain probate and that too under the supervision of the learned advocates.

Therefore, the order impugned is set aside.

Pramod Kumar Daga shall act as the executor.

There is no challenge to the Will.

Therefore, if the probate is granted, the named executor must administer the estate expeditiously preferably by three weeks from the date of grant of probate by the court.

The learned Special Officers are discharged.

We make no order as to costs.

(SUBHRO KAMAL MUKHERJEE, J.) (ASIM KUMAR MONDAL, J.) sm AR[CR].

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