

Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1136044

Court : Kolkata

Decided On : Mar-28-2014

Judge : I. P. Mukerji

Appellant : Appellant

Respondent : Respondent

Judgement :

GA No.777 of 2014 PLA No.15 of 2013 N THE HIGH COURT AT CALCUTTA
Testamentary and Intestate Jurisdiction ORIGINAL SIDE IN THE GOODS OF:
SUDHIR CHANDRA CHAKI (DECD.) BEFORE: The Hon'ble JUSTICE
I.P.MUKERJ.Date : 28th March, 2014.

Appearance: Mr.P.Gupta, Advocate The Court: The department is to issue the probate documents immediately.

According to learned counsel the document was not issued because according to the department the will was with regard to immovable properties and in the affidavit of assets movable properties were also included.

Furthermore funeral expenses were claimed by the executor which were not provided in the will.

The executor wishes to amend the affidavit of assets by deleting the necessary parts thereof.

Such prayer is allowed and the amendments as prayed for be carried out within a week from date.

I sound a note of caution to the department that the issuance of probate ought not to have been held up on the ground as mentioned by learned counsel for the petitioner.

FiRs.of all, any defect in the affidavit of assets is to be pointed out by the department before the grant.

Secondly, for the sake of argument if an executor includes Victoria Memorial in the affidavit of assets, it does not mean that he can claim it.

He can only claim those properties which belonged to the testator or testatrix and which have become the subject matter of the will.

If other claims are made in the affidavit of assets, they may be resisted by someone who has an interest therein in a title suit.

The probate Court does not decide title.

Moreover, Section 316 of the Indian Succession Act 1925 specifically permits funeral expenses to be taken into account by the executor.

In any event, even if the affidavit is checked by the department so that it conforms to the will, it should be so done before the grant It is hoped that the department confines itself to the scope of enquiry entrusted with them and does not transgress those limits so as to render a grant of probate infructuous.

This application is disposed of by directing the department to immediately issue the probate document to the executor/petitioner.

A copy of this order is to be sent to the Registrar, Original Side.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

G/ (I.P.MUKERJI, J.)

