

Joydev Pal, Deceased -andversusjoydev Paul Vs.

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Court : Kolkata

Decided On : Sep-16-2016

Judge : Ranjit Kumar Bag

Appellant : Joydev Pal, Deceased –andversusjoydev Paul

Judgement :

ORDER

SHEET GA2721of 2016 With TS17of 2015 IN THE HIGH COURT AT CALCUTTA
Testamentary & Intestate Jurisdiction ORIGINAL SIDE IN THE GOODS OF:
JOYDEV PAL, DECEASED -ANDVERSUS JOYDEV PAUL-VSDIPANWITA PAUL
(DATTA) BEFORE: The Hon'ble JUSTICE RANJIT KUMAR BAG Date : 16th
September, 2016.

Appearance: Mr.Suman Dutta, Adv.Ms.Debjani Ghosh, Adv.Ms.Paulami Bose,
Adv..for the plaintiff.

Mr.Niladri Banerjee, Adv.Mr.Soumyajyoti Nandi, Adv..for the defendant.

The Court: The defendant petitioner has prayed for appointment of handwriting expert for comparison of signature of Joydev Pal appearing on the Will dated August 27, 2013 with the signature of Jaydev Pal appearing on the marriage certificate dated August 3, 2007 and for submission of report by such expert whom the defendant can examine on the witness box.

Mr.Banerjee, learned Counsel for the petitioner contends that the petitioner changed her Counsel after August 5, 2016 and before commencing of witness action in the suit.

He further submits that the previous Counsel engaged by the defendant did not take any step for appointment of handwriting expert for comparison of disputed signature of the testator appearing on the Will with his admitted signature appearing on the marriage certificate.

According to Mr.Banerjee, the defendant should not be deprived of the opportunity to bring on record the evidence for proper and effective adjudication of the dispute involved in the suit only because the Counsel engaged by the defendant previously was negligent in taking out an application before this Court at the appropriate stage of the proceeding.

Mr.Banerjee specifically submits that the defendant will bear the entire cost of engaging handwriting expert as prayed by the defendant.

Mr.Dutta, Learned Counsel for the plaintiff has pointed out from the materials-on-record that the defendant entered appearance in the suit on February 26, 2015 and she filed the written statement with the leave of the Court on April 1, 2015.

He further submits that the defendant was totally silent about appointment of handwriting expert till closure of evidence of the defendant on September 5, 2016.

By referring to the provision of Order 18 Rule 17A of the Code of Civil Procedure, Mr.Dutta submits that the defendant is trying to take advantage of the provision of law which was deleted by the legislature by way of amendment with effect from July 1, 2002, so that the parties may not be permitted to adduce evidence at a belated stage on the plea that the evidence could not be produced even after due diligence.

On my query, Mr.Dutta submits that the signature of the testator Jaydev Pal appearing on Permanent Account Number of Income Tax Department and the signature of the testator Jaydev Pal appearing on the identity card issued by National Insurance Company Limited, were admitted by the defendant during her

cross-examination in couRs.of trial of the case and the PAN was marked exhibit-1 on admission and the identity card issued by National Insurance Company Limited was marked exhibit-2 on admission.

He argues that the signature of the testator appearing on these two documents cannot be disputed by the defendant.

According to Mr.Dutta, the object of filing the application by the defendant at this belated stage is to delay the hearing of the suit and the defendant has not approached the court with clean hands.

Having heard the learned Counsel representing both parties and on consideration of the materials on record, I find that the defendant entered appearance in the suit on February 26, 2015.

By order dated March 11, 2015 the case was marked as contentious by recalling the order passed by the Court on January 29, 2015.

On April 1, 2015 the defendant filed the written statement wherein the defendant took the plea that the signature of the testator Joydev Pal appearing on the Will dated August 27, 2013 is not genuine.

Even if I accept the submission made on behalf of the defendant that the learned Counsel engaged by the defendant before commencement of witness action did not take any step for appointment of handwriting expert by taking out appropriate application before the Court, no explanation is forthcoming why the defendant remained silent after change of learned Counsel from August 16, 2016 to September 5, 2016 when the witness action was concluded.

I fully agree with the submission made by the learned Counsel for the plaintiff that the defendant has made incorrect statement that she came to know about the changed signature of the testator Joydev Pal on the Will only during his cross-examination as witness during the trial of the suit.

On comparison of the signature of the testator Joydev Pal appearing on the Will with the signature of Joydev Pal appearing on the Certificate of Marriage,

Permanent Account Number AFQPP2501L and on the Identity Card issued in favour of Joydev Pal by National Insurance Company Limited, I find that there is variation in the signature of Joydeb Paul on those documents.

As I am unable to form opinion with regard to the signature of the Joydev Pal appearing on the Will and other documents referred to above, I think, there is need of appointment of handwriting expert for comparison of the signature of the testator Joydev Pal appearing on the Will with the signature of Joydev Pal appearing on the Certificate of Marriage, Permanent Account Number and the Identity Card issued by National Insurance Company Limited, particularly when all the said documents have been admitted into evidence and marked exhibits.

However, there is inordinate delay on the part of the defendant to take out the application for appointment of handwriting expert and the said delay has not been explained by the defendant to the satisfaction of the Court.

Accordingly, the application filed by the defendant is allowed with modification of the prayer subject to payment of costs of 1000 GMs by the defendant to the plaintiff within a period of two weeks from the date of the order, in default, the application stands dismissed.

If the cost is paid by the defendant within the stipulated period of time, one handwriting expert attached to the Bureau of Questioned Document, Criminal Investigation Department, West Bengal, or any handwriting expert of the Government will be appointed as handwriting expert for comparison of the signature of the testator Joydev Pal appearing on the Will dated August 27, 2013 (Exhibit A) with the signature of the said Joydev Pal appearing on Certificate of Marriage dated August 3, 2007 (Exhibit

3) and signature of Joydev Pal appearing on PAN (Exhibit

1) and the signature of the Joydev Pal appearing on the Identity Card issued by National Insurance Company Limited for opinion whether the said signatures are of the same person.

The cost of payment of handwriting expert will be assessed by the learned Registrar, Original Side and the cost will be paid by the defendant within a period of two weeks from the date of the assessment of the cost by the learned Registrar, Original Side.

Learned Registrar, Original Side will arrange for sending the documents to the handwriting expert with a direction to submit the report within a period of four weeks from the date of receipt of the documents by the handwriting expert.

The application being GA No.2721 of 2016 is, thus, disposed of.

Under the above circumstances let the suit be taken off from the Peremptory Board.

List the suit under the heading For Orders after expiry of two weeks.

(R.K.BAG, J.) dg2/sd.

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