

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Nov-21-2016

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

IN THE HIGH COURT AT CALCUTTA TESTAMENTARY AND INTESTATE JURISDICTION ORIGINAL SIDE GA 3436 OF2014IN PLA59OF 2010 IN THE GOODS OF: NAND BHERUMAL ADVANI ALIAS NANDU ADVANI (DECEASED)
For the Petitioner: Mr Mr Mr Mr J.

Chowdhury, Adv., M. S. Tiwari, Adv., S. K. Tiwari, Adv., R. Das, Adv. For the Respondents: Mr Surojit Nath Mitra, Sr Adv., Mr Sakya Sen, Adv., Ms Sanchari Chakraborty, Adv. Hearing concluded on: November 16, 2016. BEFORE SANJIB BANERJEE, Judge Date: November 21, 2016. SANJIB BANERJEE, J.

: - The petition is for revocation of the grant of a probate filed by a person claiming to be the legatee in respect of the only immovable property of the testator under a previous Will. Probate of the previous Will has been granted by the Bombay High Court. The previous Will is said to be of June 14, 2006, of which probate was obtained on May 26, 2014. The later Will, which has been probated by this Court on February 3, 2014, is of July 24, 2009.

2. The principal ground urged by the petitioner, on the strength of a recent Supreme Court judgment, is that the mandatory pre-condition under Section 283(3) of the Succession Act, 1925 was not complied with prior to probate of the later Will being granted by this Court. The petitioner claims to be a resident of Mumbai and alleges that since the general citation was not published in Mumbai, where the immovable property of the testator is situate, the petitioner had no notice of the petition for grant of probate and could not object thereto prior to the grant. The petitioner claims to be the niece of the husband of a predeceased sister of the testator. The relevant uncle of the petitioner predeceased the testator. The petitioner, however, does not assert her tenuous relationship with the testator to claim the estate or the non-issuance of any special citation on the petitioner as a ground for revocation; though she maintains that she was liable to be cited as the executor and beneficiary under a previous Will.

3. On merits, the petitioner merely questions the signature of the testator in the later Will and claims the same to be forged. It is also the case of the petitioner that the testator died a bachelor and issueless and his three sisters predeceased him and all such sisters were issueless; and, as a consequence, the testator had no heirs under either class in the Schedule to the Hindu Succession Act, 1956. The petitioner also asserts that the testator left no heirs either named under Class I to IV entry I to VIII of Schedule I or II (sic, there is only one Schedule) of the Hindu Succession Act nor any Agnates or Cognates.

. Indeed, the same averment was made by the petitioner in her petition for grant of probate before the Bombay High Court and paragraph 3 of the present petition is a substantial reproduction of paragraph 8 of this petitioners petition for grant of probate in respect of the earlier Will (including the spelling mistakes).

4. The narration in the present petition leading upto the prayer for revocation of the grant made by this Court may be summarised. The petitioner claims that since the testators relations and friends. all lived in Mumbai, the testator purchased a flat in a cooperative housing society in Chembur. According to the petitioner, the testator would reside in the flat along with his sister, Vishni Bherumal Advani, whenever he went to Mumbai. The petitioner claims that the testator and sister Vishni were all

along fond of and close to. the petitioner who used to take care of them.

. The petitioner says that upon sister Vishnis death in June, 2006, the testator went to Mumbai for the funeral, but could not reside alone in his flat.

. The petitioner claims that the testator stayed with the petitioner at the petitioners residence after the funeral and even after he left for Kolkata thereafter, the testator used to keep in touch with the Applicant from time to time.

. The petitioner asserts that during the testators stay in Mumbai in June, 2006, he executed his last Will and Testament on 14th June 2006 and handed over a copy to the Applicant and asked the Applicant to keep the same carefully.

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5. The narrative continues thereafter from June, 2009 and the case run by the petitioner is best seen in the petitioners words from paragraphs 7 and 8 of her petition:

7. The Applicant states that some time since June 2009 the deceased stopped calling the Applicant and inspite of best efforts the Applicant was unable to get in touch with the deceased. In about 2012 the Applicant came to Calcutta and inquire about the whereabouts of the deceased. During her visit to Calcutta in December 2012, the applicants for the first time came to learn that the deceased died in Kolkata on September 29, 2009. The applicant could not ascertain as to why the death of the deceased was suppressed from the friends and relatives of the deceased at Bombay. However, in spite of best efforts, the applicant was unable to obtain any particular or detail of the death and as to what happened before the death and what transpired thereafter.

8. The applicant states that on her return to Mumbai she started searching for the Will of 2006 which the Applicant could trace out only on or about the 1st week of November 2013. On discovery of the Will the Applicant was advised to apply for probate.

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6. To complete the petitioners story, though it may not be of much relevance in the present context, she obtained the probate of the Will of June 14, 2006 from the Bombay High Court on May 26, 2014. Under such Will, all properties, movable and immovable, including the said Flat was bequeathed to the applicant . The petitioner claims to have come to know of the probate granted of another Will of the testator by this Court in June, 2014. The petitioner says that she came to know of the probate granted by this Court of another Will of the testator from the housing society that owns and manages the Chembur building in Mumbai where the testator had a flat. Though the petitioner does not ascribe any exact date to her first knowledge of the probate granted by this Court, it is evident from paragraphs 13 to 18 of the petition for revocation that within two days of the petitioner obtaining the grant of the earlier Will from the Bombay High Court, she applied to the housing society on May 28, 2014 for the shares in the housing society standing in the name of the testator and the relevant flat being transferred in her name.

7. In response to the petitioners application for transfer of the flat in her name, the relevant society issued a letter on June 13, 2014 recording that as per the societys records, one Prakash Bajaj had relied on a later Will of the erstwhile owner of the flat. The letter also reminded the petitioner herein that no death certificate (original) has been produced of late Mr. Nand B. Advani by you. and that no proper application is made within prescribed time limit (6 months) as per provisions in MCS Act 1960 read with byelaws.

. The society put it on record that the petitioner had already been advised accordingly on June 12, 2014 during discussion in the office.

. The present petition claims that on June 17, 2014, the petitioner forwarded necessary documents. to the society. Such necessary documents must have been the probate obtained by the petitioner from the Bombay High Court and the papers in connection therewith which the housing society, in turn, appears to have forwarded to the executors of the later Will.

8. On August 26, 2014, the housing society forwarded to the petitioner a copy of a letter dated August 6, 2014 received from the executors of the Will probated by

this Court and invited the petitioners comments thereon. In the letter of August 6, 2014 the executors of the Will probated by this Court relied on the report of a government-approved handwriting expert. The opinion of such expert was appended to the letter of August 6, 2014. The opinion was that the signature of the testator in the Will propounded by the petitioner and probated by the Bombay High Court was not authentic.

9. Though a previous letter of June 17, 2014 was addressed on behalf of the petitioner to the housing society by the Mumbai solicitors involved in the probate proceedings before the Bombay High Court, curiously, the response of the petitioner to the housing societys letter of August 26, 2014 came from a different lawyer. The argument contained in such letter betrays crass parochialism and questionable legal knowledge. However, the housing society did not succumb to the intimidation evident from the lawyers letter of August 27, 2014 issued on behalf of the petitioner herein. The present petition came to be filed on or about November 7, 2014.

10. The petitioner contends that since the immovable property of the testator was in Mumbai, under Section 283(3) of the Act of 1925 it was incumbent on this Court to cause a copy of the citation in respect of the Will propounded by the executors thereof to be sent to the appropriate district judge within whose jurisdiction the immovable property was situate. The petitioner insists that the command of Section 283(3) of the Act is mandatory and the breach thereof should, ipso facto, result in the revocation of the grant.

11. In furtherance of such contention, the petitioner refers to a judgment reported at (2008) 1 SCC267(Basanti Devi v. Ravi Prakash Ram Prasad Jaiswal) and places the following passage from paragraph 18 of the report:

18. The provisions contained in sub-section (3) of Section 283 are mandatory in nature. Once the statutory requirements are found to have not been complied with, an application for revocation of the grant of probate would be maintainable in terms of Section 263 of the Act, apart from the fact that non-publication of citation could be one of the grounds to revoke the grant of probate. .

12. The facts on which such finding was rendered by the Supreme Court need to be recounted. The issue that the Court considered was whether a petition for revocation of the grant of probate could be maintained by a person who ought to have been cited but was not. The disputed Will in that case was claimed to have been executed by a lady in favour of a grandson of a brother of her deceased husband. The petitioner for revocation, who was the appellant before the Supreme Court, applied for revocation on the strength of a later Will. The petition for probate in respect whereof the grant was challenged initially referred to only one immovable property of the testator in the State of Maharashtra but was later amended by incorporating the words and elsewhere in the Union of India. without specifying the location of any other immovable property. The schedule of assets referred to a piece of land in Uttar Pradesh, but no citation was made in the State of Uttar Pradesh. On the appellants challenge to the grant made before the Bombay High Court on the ground that the appellant was an heir of the testator and no citation was issued to her and she was also the beneficiary under the later Will, the same was summarily rejected by a terse order. The intra-court appeal stood dismissed on the premise that the appellant before the Supreme Court was not a legal heir of the testator as she was only an agnate. The argument before the Supreme Court was that an agnate was also an heir under the Act of 1956 and, in any event, since no citation was made through the Court exercising territorial jurisdiction over the Uttar Pradesh property, the probate granted by the Bombay High Court was liable to be revoked.

13. The Supreme Court held that the petition for revocation of the grant of probate filed by the appellant before it should have been entertained.

. The order of the appellate forum of the Bombay High Court was set aside and the appeal allowed and the matter remitted to the single bench of the Bombay High Court with the observation that the Supreme Court had not entered into the merits of the matter.

14. It is, thus, evident from the report in *Basanti Devi*, that the Supreme Court regarded the order of rejection of the petition for revocation of the grant of probate as an order not entertaining the petition on merits. The Supreme Court found that

the petition was maintainable and left the consideration on merits to the appropriate forum. Despite the Supreme Court holding that the requirement under Section 283(3) of the Act of 1925 was mandatory, it did not revoke the grant only on such finding.

15. It is not the petitioners assertion in this case that the petitioner was entitled to any notice in her capacity as an intestate heir of the testator. All that the petitioner says is that since the mandatory requirement under the relevant provision was not adhered to, the grant has to be regarded as defective in substance within the meaning of the relevant expression in Explanation (a) to Section 263 of the Act of 1925. The petitioner maintains that once the breach of any mandatory provision is cited, there is no need to ascribe any motives or invite any excuse therefor, particularly when the breach is evident, undeniable and admitted.

16. Again, without alleging any mala fides on the part of the executors who obtained the grant from this Court, the petitioner contends that her status as the executor or beneficiary under a previous Will entitled her to be cited in course of proceedings pertaining to a subsequent Will of the same person. The petitioner refers to Section 283(1)(c) of the Act of 1925 and says that both as the executor under a previous Will and the beneficiary thereunder she would be entitled to claim an interest in the estate of the deceased and, as such, liable to be cited before the grant of probate of the later Will.

17. The petition is opposed by the executors who have obtained probate of the later Will. The executors were neither related to the testator nor are they beneficiaries under the later Will. Such executors interest in the matter is confined to their status as executors and the choice of the charity for the residual estate.

18. The executors defense to the plea for revocation, in short, is that the petitioner is a complete stranger to the estate; that she had little or no connection with the testator; and, the testator never mentioned her to the executors, who were close friends of the testator and who tended to the testator for a substantial period after he was diagnosed with cancer till he was consumed by that emperor of all maladies. The executors appear to be well-established and persons of considerable social standing. According to them, the testator was one of many

who so fall in love with this seemingly dying city that they forsake their family and relatives to live out their life here despite the city's present inadequacies and its diminished status. The executors refer to the mail exchanged between them, which remain unchallenged, regarding the testator's treatment both in the city and, temporarily, elsewhere. The executors say that about a month after the testator expired on September 29, 2009 at his rented accommodation in Kolkata, the executors started to take steps to obtain probate of the Will that was in their possession. The executor first named in the later Will, who has affirmed the affidavit-in-opposition in the present proceedings, claims to have known a cousin of the testator. Such first-named executor claims to have obtained the particulars of all possible agnate heirs of the testator from the relevant cousin, who is a son of the testator's father's brother. Eleven agnate heirs of the testator, all being surviving sons and daughters of the testator's father's brothers, were named in the petition for the grant of probate of the Will filed in this Court and their names and particulars have been furnished in the affidavit filed in the present proceedings. The affidavit goes on to say that since most of the legal heirs of the testator could not be contacted or their consent obtained, special citations were issued on them, in addition to the general citation being published. It was only upon this Court being satisfied that all the legal heirs of the testator had been specially cited, which took considerable time, that the Court required the executors to file an affidavit of undertaking that there was no person interested in the estate under Section 283(1)(c) of the Act of 1925 other than those who had been served the special citations. Upon such affidavit of undertaking being filed pursuant to the direction in such regard of November 13, 2013, the probate of the Will of July 24, 2009 was granted in favour of the executors on February 3, 2014.

19. The executors' affidavit also refers to the administration of the estate in terms of the Will and the circumstances in which they came to be aware of the rival claim under a previous Will lodged by the petitioner herein with the housing society in Chembur. Paragraph 4(o) of the affidavit is of some relevance in the context: 4 (o). Immediately after obtaining the said Probate in respect of the said forged Will, the petitioner had contacted the said Navjeevan Cooperative Housing Society Ltd. informing it about the alleged grant. The said housing society did not want to entertain the claim made by the petitioner. The petitioner then approached me in

Kolkata. The petitioner along with one Hiru Advani visited me in Kolkata with an offer to compromise in the nature of give and take i.e. they wanted to retain the flat in Mumbai and release the other assets of deceased. We refused to accept the said offer of the petitioner.

20. The only other averment of some relevance in the executors affidavit is that Hiru Advani, who is shown as an attesting witness to the Will of June 14, 2006 propounded by the petitioner herein, was served a special citation in connection with the later Will, but he chose not to object to the grant of probate thereof.

21. Among the agnate heirs of the testator referred to by the executors, there is one Hiro K. Advani, son of late Kala Chand Advani of 30, K. T. Shahani Trust Colony, Chembur, Mumbai - 400 071. From the papers pertaining to the grant made by the Bombay High Court, the relevant Will appears to have been attested, along with another, by one Hiru Advani of 201/B, Golden Chariot, Lokhandwala Complex, Andheri (West), Mumbai - 400 053. Such Hiru Advani as referred to in the Bombay Will also affirmed the affidavit of attesting witness in the Bombay proceedings, where his address, on February 19, 2014, was shown to be the same as recorded in the Bombay Will. Unfortunately, such affidavit of the attesting witness filed in the Bombay High Court does not refer to the name of his father.

22. The assertion in the executors affidavit herein that the petitioner herein and Hiru Advani called on the first-named executor of the later Will in Kolkata with an offer to compromise the matter in the nature of give and take., has not been dealt with in the affidavit-in-reply of the petitioner. Further, though an impression has been sought to be given at paragraph 6 of the reply of the petitioner that the Hiru Advani who attested the Bombay Will was different from the Hiro K. Advani referred to as an agnate heir of the testator in the Calcutta proceedings, no affidavit has come from Hiru Advani and paragraph 6 of the petitioners reply has been verified as true to the petitioners knowledge without reference to any inquiry made with Hiru Advani. Significantly, though the name of the father of Hiru Advani of the Bombay Will is not evident from the Bombay papers it has not even been asserted by the petitioner that the Hiru Advani who attested the Bombay Will was

not a son of late Kala Chand Advani. To be fair to the petitioner, almost no attempt has been made to otherwise discredit the grant made by this Court save by referring to the bald assertion in the petition that the signature of the testator in the Calcutta Will was forged. In fact, it does not appear that the petitioner has based her allegation of forgery on anything but the alleged signature of the testator in the Will propounded by her; and, such signature has been adversely commented upon by a handwriting expert to which there is no reasonable counter.

23. Before coming to the core issue, the irrelevant factors need to be weeded out. It matters little that the probate of an alleged earlier Will has been obtained by the petitioner from the Bombay High Court. Even if the serious anomalies in obtaining the grant from the Bombay High Court are disregarded, in deference to the grant subsisting and the grant having been made by a Court of competent jurisdiction, once a person claims to be an executor or a beneficiary under a previous Will of the same person, he would be entitled to be cited in proceedings for the grant of probate of a subsequent Will of the same deceased. As a corollary, if the executor or the beneficiary under a Will of the same deceased is not cited in course of the grant of probate or letters of administration in respect of a subsequent Will of the deceased, such executor or beneficiary would be entitled to cite substantive defect in the proceedings and claim revocation of the grant. In other words, the mere claim of a person as an executor or a beneficiary under a previous Will of the same deceased will entitle such person to maintain a petition for revocation of the grant of probate or the letters of administration of a subsequent Will of such testator, whether or not the executor or beneficiary under a previous Will was deliberately not cited or the executors under the subsequent Will (or application for letters of administration) were not aware of any previous Will. As to whether such a petition for revocation would result in the grant being revoked is an altogether different matter. One may have a right to maintain a petition for revocation of the grant of a probate or letters of administration of the Will; but the right to maintain such petition cannot be equated with the right to obtain the revocation. It is the same as the distinction between a plaintiff being entitled to maintain a suit and the plaintiff's right to obtain the relief that is sought in the suit. Merely because the suit is maintainable does not imply that the suitor is entitled to any or all the reliefs claimed therein.

24. It is in such light that the Supreme Court dictum in *Basanti Devi* has to be read. The Supreme Court set aside the Bombay High Court orders that virtually refused to entertain the petition for revocation. The judgment in *Basanti Devi* covers two legal aspects: that an agnate of a deceased is a recognised heir under the Act of 1956 and the non-citation of such an agnate entitles him to maintain a petition for revocation of the grant of probate; and, that the assertion of the non-adherence to the requirement under Section 283(3) of the Act of 1925 would make a grant susceptible to a challenge on such ground. The judgment in *Basanti Devi* does not lay down that the mere non-compliance of mandatory provision 283(3) of the Act of 1925 would entail the revocation of the grant. If that had been so, the grant would have been revoked by the Supreme Court itself in that case since it was the admitted position, as evident from the opening sentence of the paragraph 7 of the report, that no citation was made anywhere in the State of Uttar Pradesh despite one of the properties of the testator being situate in such State.

25. It is such aspect of Section 263 of the Act of 1925 that the executors here have emphasised on, with particular reference to the use of the word may. therein and not the word shall..

26. The executors rely on a Division Bench judgment reported at AIR1957 Cal 631 (*Promode Kumar Roy v. Sephalika Dutta*) and a Supreme Court decision reported at (1955) 2 SCR270(*Anil Behari Ghosh v. Latika Bala Dassi*), which has been referred to in the cited Division Bench judgment of this Court. The two unexceptionable propositions laid down in the Division Bench judgment are that the grounds under the Explanation to Section 263 of the Act of 1925 are exhaustive as to what may be just cause to revoke a grant; and, that despite a breach of some limb of the Explanation, it is not necessary that the grant has to be revoked unless a prima facie case touching upon the validity or authenticity of the Will is made out.

27. It is the second of the two propositions covered by the Division Bench judgment which is of relevance herein. The petitioner asserts that the noncompliance of the mandatory requirement under Section 283(3) of the Act of 1925 is, by itself, good enough for the grant to be revoked. The executors claim

that even if the grant were to be revoked, another would follow as nothing is shown to detract from the authenticity or the validity of the Will probated by this Court. The executors suggest that the Court would not embark on a meaningless and time-consuming exercise of revoking a grant on a technical objection without being satisfied that there is any substantive defect in the grant or the presence of the petitioner for revocation may result in a fresh grant not being made.

28. The facts in Anil Behari Ghosh are complex and such complexity may not have any bearing on the legal principles enunciated therein since such principles would be of universal application in respect of Section 263 of the Act of 1925. However, since uneducated distinctions are sometimes now made on facts without such facts making any difference, the essential factual position leading upto the matter reaching the Supreme Court in Anil Behari Ghosh are noticed. The testator provided for his wife and certain other relatives to be beneficiaries under his Will and the larger share thereunder to go to his adopted son. There were five executors who were named, including two solicitors, and an alternative executor for each was also named in the Will in the event of the death of any of them. Three of the executors were eligible to apply for grant at the time that they petitioned for the grant and obtained an appropriate order in 1921. Twelve years after the original grant, a second grant was sought by two of the original grantees along with a third executor who had attained majority. A few months later one of the original grantees along with a another executor who had not applied for grant earlier sought the revocation of the second grant. In response to the relevant summons, one of the executors who had jointly obtained the second grant complained of the original grantees not furnishing accounts and actively concealing the fact that the residuary legatee under the Will was disqualified from any benefit thereunder since such residuary legatee, who was the adopted son of the testator, had murdered the testator and was convicted as such. In such objection, a cousin of the testator was identified to be the only intestate heir entitled to the residuary legacy upon the adopted son being disentitled from claiming such legacy. The application for discharge of the executors under the two grants was dismissed. The cousin of the testator who was shown to be his only intestate heir and entitled to the residuary legacy died without claiming any interest in the estate despite being aware of his rights. It was only in 1949 that a son of the

intestate heir of the testator applied for revocation of the grants on the ground that his father had not been cited.

29. On such facts, the Supreme Court observed that the relevant cousin of the testator would have been entitled to the estate whether or not the Will was genuine or valid. Such finding was on the ground that upon the death of the testator's widow in 1921 he would have been entitled to take the reversionary estate if the Will was not valid; and, even if the Will was valid, such possible intestate heir stood to gain all the interest under the Will that had been bequeathed to the adopted son as the adopted son was disentitled to enjoy the benefits of the legacy.

30. The Supreme Court also noticed that in the petition for revoking the grant, which succeeded before this Court and culminated in an order requiring the Will to be proved in solemn form, the petitioner for revocation had not made the least suggestion casting any doubt on the genuineness and validity of the will.

. On such aspect it was argued before the Supreme Court that at the stage of the petition for revocation of the grant being filed it was not necessary to cast any doubt on the validity of the Will and such matter had only to be taken up after the grant was revoked. In support of such contention, a Division Bench judgment of this Court reported at AIR 1915 Cal 421 (*Mokashadayini Dassi v. Karnadhar Mandal*) was placed, where it was observed that when a just cause for revocation of a probate was made out, the consideration as to the genuineness of the Will was not relevant as such issue would arise in course of the cause being set down as contentious after the revocation. The Supreme Court held in *Anil Behari Ghosh* that the relevant observation in *Mokashadayini's* case was not intended to be of universal application. The dictum in *Anil Behari Ghosh* is spread over a long passage at paragraph 16 of the report:

16. It was further argued on behalf of the appellant that the appeal should be allowed and the grant revoked on the simple ground, apart from any other considerations, that there had been no citation issued to Girish. In our opinion, this proposition also is much too widely stated. S. 263 of the Act vests a judicial discretion in the Court to revoke or annul a grant for just cause. The explanation has indicated the circumstances in which the Court can come to the conclusion

that just cause. had been made out. In this connection the appellant relied upon Cl. (a) quoted above which requires that the proceedings resulting in the grant sought to be revoked should have been defective in substance.. We are not inclined to hold that they were defective in substance.. Defective in substance. must mean that the defect was of such a character as to substantially affect the regularity and correctness of the previous proceedings. If there were any suggestions in the present proceedings or any circumstances were pointed out to show that if Girish had been cited he would have been able to enter a caveat, the absence of citation would have rendered those proceedings defective in substance.. It may be that Girish having been found to have been the next reversioner to the testators estate in case of intestacy and on the assumption that Charu had murdered the testator, Girish might have been entitled to a revocation of the grant if he had moved shortly after the grant of the probate on the simple ground that no citation had been issued to him. The omission to issue citations to persons who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant. But this is not an absolute right irrespective of other considerations arising from the proved facts of a case. The law has vested a judicial discretion in the Court to revoke a grant where the Court may have prima facie reasons to believe that it was necessary to have the will proved afresh in the presence of interested parties. But in the present case we are not satisfied in all the circumstances of the case that just cause within the meaning of S. 263 had been made out. We cannot ignore the facts that about 27 years had elapsed after the grant of probate in 1921, that Girish in spite of the knowledge of the grant at the latest in 1933 did not take any steps in his lifetime to have the grant revoked, that there was no suggestion that the will was a forgery or was otherwise invalid and that the will was a registered one and had been executed eight years before the testators unnatural death. Hence the omission of citations to Girish which ordinarily may have been sufficient for a revocation of the grant was not in the special circumstances of this case sufficient to justify the Court to revoke the grant.

31. In *Promode Kumar*, it was held that even if good grounds for revocation were made out, prima facie, touching upon the validity or genuineness of the Will, either of the two courses of action could be followed: revoking the grant and requiring the proceedings to be conducted afresh; or deferring the revocation to afford the propounder a chance to prove the genuineness and validity of the Will and, thereby, render the revocation unnecessary. On whether upon a petitioner for revocation of a grant establishing just cause, revocation would automatically follow, the following passage from paragraph 14 of the report is instructive:

14. The net position then is that an applicant for revocation must, in order to succeed, establish just cause within the meaning of S. 263, that is, as laid down in clauses (a) to (e) thereof, but, even if just cause be established, revocation may still be refused by the Court in the exercise of its discretion under that section, if the facts and circumstances of the particular case would warrant such refusal. .

32. It is here that the quality of the case carried by the petitioner for revocation has to be assessed, especially as to whether any prima facie ground for questioning the genuineness or validity of the Will has been made out. To begin with, merely because the petitioner asserts as an executor or a beneficiary under a previous Will of the same testator, the petitioner is entitled to maintain the present petition for revocation of the grant on the ground that she was not specially cited. Such right of the petitioner is not embellished upon her obtaining a probate in respect of the Will that she propounded; even if such Will had not been probated prior to her applying for revocation of the probate pertaining to a later Will, her right would have to be recognised. But such a petitioner would also have to allege some grounds which, if taken in the affidavit in support of the caveat following revocation, could lead to the refusal to grant probate of the later Will. This is exactly the case that this petitioner has not been able to make out.

33. The petitioner has alleged that the signature on the Will probated by this Court was forged. Nothing in support of such assertion has been brought to Court. The petitioner does not say that she is in possession of other documents bearing the testator's signature. She has not relied on any of such documents to suggest that there may be any suspicion as to the genuineness of the subsequent Will.

34. It is true that the grant of probate may be revoked even if no wrongdoing on the part of the propounder is found; but for such revocation a substantive defect has to be established. An example may help explain the point better. It is possible that a Will surfaces a few years after the death of the testator, wherein an executor is named but the executor was not aware of the Will. If, say, such Will were to provide for a bequest directly to the grandson by bypassing the son of the testator and the executor applies for the grant of probate without harbouring any misgivings as to the genuineness of the Will upon the attesting witnesses named therein testifying to their presence at the time of the execution of such Will. It is possible that a creditor of the disinherited son of the testator may apply for revocation without blaming the executor for the executor may not have known that the son had any creditor. The unnatural bequest of bypassing the son and providing for the grandson as legatee would be an implied ground questioning the genuineness of the Will in the creditors application for revocation of the grant, though no ill-motive may be attributed to the executor for obtaining the grant. Equally, it is possible that the knowledge aliunde of such creditor of the existence of the Will is established and such creditor is also demonstrated to have been aware of the petition for grant prior to probate being granted. Merely because he was not cited would not entitle him to obtain revocation in such circumstances.

35. In particular, when a defect in citation is made a ground for revocation, the petitioner for revocation of the grant has to prima facie demonstrate how he could have opposed the grant if he had been cited or been successful at that.

36. The rule would apply with even more force when the grievance is of a general citation not being appropriately made, particularly, keeping in mind how a general citation is made. Ordinarily, a general citation is issued in this Court and it is made effective upon a copy thereof being pasted at an appropriate notice-board within the precincts of this Court and by forwarding a copy thereof to the appropriate collectorate for it be also put up on the notice-board of such collectorate.

37. The grievance of the petitioner herein is that the general citation was not forwarded by this Court to the Bombay High Court or any other Court in Mumbai though the only immovable property of the testator was in Mumbai. What such

submission implies is that if the general citation had hung from any notice-board of the appropriate Court in Mumbai or the relevant collectorate, the petitioner would have noticed it. The argument may be better appreciated if seen from the other perspective. If, indeed, the petitioner was entitled to be cited, even if the general citation had been hung in any Mumbai Court or collectorate and the petitioner had failed to notice the same, this Court may not have rejected the petition for revocation out of hand in view of the status of the petitioner upon her claiming to be an executor or beneficiary under a previous Will. However, the petitioner would still have to demonstrate some cogent ground to convince the Court that if she were allowed to participate in the proceedings for grant of probate of the later Will she could have relied on some material to discredit its validity or genuineness.

38. In fine, there is no doubt that the petitioner makes out a ground of just cause for the petitioner to be entitled to apply for revocation; but the petitioner has not been able to show, even prima facie, that anything the petitioner may say or bring, if the grant is revoked and the Will is required to be proved in solemn form, may lead to the grant being refused. The petitioner in this case fails in the second of the twin tests that would entitle her to obtain revocation of the grant made by this Court on February 3, 2014 in respect of the Will of the testator of July 24, 2009.

39. Ideally, a litigant as the present petitioner should have been dealt with more firmly than possible in the light of the view taken herein. The case made out by the petitioner is so incredible and patently absurd that she should have been made to pay therefor. But because her unbelievable story does not reveal any possible chance to dislodge the later Will and no trial is called for, the petitioner gets away lightly. One of the considerations that has weighed with the Court in the present assessment is that the substantial residual estate goes to charity and the executors appear to be disinterested persons who may lose interest if the matter lingers. This is probably the primary ground that the petitioner may have banked on. Experience shows that disinterested persons may not stay back to fight a long-drawn battle or even make the effort of going too much out of their way to contest a matter that brings no personal benefit to them either way. The petitioner may have hoped that she would have worn down the executors and grabbed the estate by default.

40. GA3436of 2014 is dismissed. The petitioner will pay nominal costs assessed at 4000 GM to the executors which the executors will be entitled to adjust against the expenses incurred to defend the present proceedings.

41. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities. (Sanjib Banerjee, J.)

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