

353/2008

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Court : Kolkata

Decided On : Dec-13-2011

Judgement :

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PLA No. 353 of 2008

In the High Court at Calcutta

Testamentary and Intestate Jurisdiction

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In the Goods of :

Jai Singh Singhi alias Jay Singh Singhi

(Deceased)

Before:

The Hon'ble Justice I.P. MUKERJI

Date: 13th December, 2011

Appearance:

Mr.P. Sancheti,Advocate

The Court: I have considered the Report of the Registrar, Original Side dated 2nd December, 2011. I have also considered the Report of the Senior Master and Official Referee dated 1st December, 2011. According to the Report, the Registry of our Court had been instructed by the Hon'ble Interlocutory Judge to be very strict with Wills which have not been executed in accordance with section 63(c) and section 281 of the Indian Succession act, 1925. It is also mentioned in these reports that the Hon'ble Judge had directed the department to act in accordance with law. These instructions do not mean that the Registry officials will adjudicate by scrutinizing the Will or the accompanying affidavit of an attesting witness as to whether there is compliance with section 63(c) or section 281 of the Indian Succession Act, 1925 and if they come to an opinion that any of these documents does not comply, they will not process the application for grant of probate, any further.

Nothing can be further from the truth.

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If the Registry notices anything which appears to be a serious defect, they have to bring it to the notice of the Hon'ble Judge by issuing a note, with a copy to the propounder and placing the matter in chamber. This is so because stopping processing of a probate application on the ground that the department feels it is defective will cause great damage to the estate of the deceased. That was not the intention of the Hon'ble Interlocutory Judge. I had instructed the department accordingly by my order dated 9th November, 2011 in PLA No. 44 of 2011 (In the Goods of Satyendra Nath Guha (Deceased) Now that this problem has been referred to me once again, an attempt can be made to solve it. Section 281 of the said Act says that the petition shall be verified by at least one of the witnesses to the Will, (when procurable). This means that when a witness is not procurable, no such affidavit may be required. This itself, in my opinion, makes the requirement of the section directory. [See, AIR 1995 Madhya Pradesh 274 (Smt. Jamunabai and; 2 Ors. Vs. Surendra Kumar and; Anr.) and AIR 2006 Delhi 21 (Smt. Swarnalata Vs. State and Anr.)] Secondly, the affidavit of the attesting witness says that the Will was executed in his presence. Such technicalities whether presence is to be

equated with seeing the testator sign, should be raised in Court upon an objection being made by any person affected by the application or by the grant or upon being referred to the Court by the Department, with their objection. Thirdly, this application is accompanied by consent affidavits of all the heirs except one who would have succeeded on intestacy under section 8 of the Hindu Succession Act, 1956 had the testator died intestate. The caveat of the 3

other heir has been discharged. Therefore, those who would have succeeded on the Will falling through have consented to the grant or have no objection to the grant. Or their objection is disregarded by the Court by discharge of the caveat. In all these circumstances, the objection raised in this particular case is absolutely untenable.

I direct the joint petitioners to file an undertaking in this Court in the form of an affidavit that there are no other person interested in the grant of probate under section 283(c) of the Indian Succession Act. Such affidavit should be filed by 21st December, 2012. Thereafter, this application is to be listed for grant of probate as a non contentious cause.

All parties concerned and; Registry are to act on a signed photocopy of this order on the usual undertakings.

(I.P. MUKERJI,J)

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