

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

Present:

**Hon'ble Justice Nishita Mhatre,**  
**And**  
**Hon'ble Justice R. K. Bag.**

**F.A.110 of 2004**  
**Shri Arun Chandra Dey**  
**V.**  
**Shri Debasish Ghosh & Ors.**

**For the Appellant** : **Mr. Tarak Nath Sarkar,**

**For the Respondents** : **Mr. Prabal Mukherjee,**  
**Mr. Sukanta Chakraborty,**

**Heard on** : **18.03.2015**

**Judgment on** : **18.03.2015**

**R. K. Bag, J.**

The appellant obtained the grant of letters of administration with copy of the last will and testament of Bimal Pratibha Ghosh on 28.09.1994 from the Court of Learned District Delegate, Alipore in case no.238 of 1992. The said grant of letters of administration was revoked by Learned Additional District Judge, 2<sup>nd</sup> Court, Alipore on 03.09.2003 in revocation case

no.84 of 1998 at the instance of the respondent no.1, which is under challenge in this appeal.

2. One Bimal Pratibha Ghosh, the widow of Late Sashanka Sekhar Ghosh used to reside at premises no.D/1, Baghajatin Station Road, Calcutta. One Niranka Ghosh was the brother of Late Sashanka Sekhar Ghosh by full blood. Niranka Ghosh died in the year 1970 leaving behind his wife, five sons and two daughters. The respondents are the sons and daughters of Niranka Ghosh. Bimal Pratibha Ghosh died on 12<sup>th</sup> April, 1991. The appellant Arun Chandra Dey filed an application before the Court of Learned District Delegate, Alipore for grant of letters of administration in respect of the will of Bimal Pratibha Ghosh. It is alleged by the respondent no.1 before the trial court that the appellant obtained the grant of letters of administration without issuing citation upon the respondent nos.1 to 7 who are legal heirs of Bimal Pratibha Ghosh. It is also alleged that the appellant obtained the grant of letters of administration by suppressing the material facts and by practising fraud on the court. The specific case made out by the present appellant before the trial court is that Bimal Pratibha Ghosh was suffering

from cancer at the last stage of her life and the appellant used to look after her and that Bimal Pratibha Ghosh executed her last will in favour of the appellant out of love and affection and that the appellant had no knowledge that the respondents are the legal heirs of the deceased Bimal Pratibha Ghosh. Learned Judge of the court below revoked the grant of letters of administration issued in favour of the appellant on the ground that the citations were not issued upon the respondents who are interested in the estate of the deceased in their capacity as legal heirs of the deceased Bimal Pratibha Ghosh.

3. Mr. Tarak Nath Sarkar, Learned Counsel appearing for the appellant contends that the citations were not issued upon the respondents and as such he is not challenging the revocation of the grant of letters of administration issued in favour of the appellant. However, Mr. Sarkar submits that on revocation of the grant of letters of administration the original probate proceeding i.e. case no.238 of 1992 will revive and the appellant must be given an opportunity to prove the will in solemn form in presence of the respondents after issuing of citation upon the respondents who claim to have interest in the estate of the

deceased Bimal Pratibha Ghosh in the capacity of legal heirs of the deceased. Learned Counsel has referred to the decisions reported in AIR 1958 Cal 377, AIR 1964 Patna 567, AIR 2002 Cal 140 and 10 CLJ (1909) 264 in support of his above contention. On the other hand, Mr. Prabal Mukherjee, Learned Senior Counsel submits that the appellant can always file a fresh application for grant of letters of administration of the last will and testament without any leave from this court. According to Mr. Mukherjee, the appellant obtained the grant of letters of administration by suppressing the material facts and without citations of the respondents who are the legal heirs of the deceased Bimal Pratibha Ghosh and as such the revocation of grant of probate is justified under the law.

4. It appears from the materials on record that the deceased Bimal Pratibha Ghosh died on 2<sup>nd</sup> February, 1991 as issueless. Her husband Sashanka Sekhar Ghosh died in the year 1983. The respondents are the sons and daughters of younger brother of Sashanka Sekhar Ghosh who died in the year 1970. Accordingly, the respondents have interest in the estate of the deceased Bimal Pratibha Ghosh in their capacity as legal heirs

of Bimal Pratibha Ghosh. Admittedly the citations were not issued to the respondents at the time of obtaining grant of letters of administration from the court of Learned District Delegate, Alipore by the appellant. Section 263 of the Indian Succession Act, 1925 lays down that the grant of probate or letters of administration may be revoked or annulled for just cause. Just cause shall be deemed to exist where in (a) the proceedings to obtain the grant were defective in substance; or (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or (d) the grant has become useless and inoperative through circumstances; or (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect. In the instant case the appellant obtained the grant of letters of

administration without citing the respondents as legal heirs of the deceased Bimal Pratibha Ghosh and as such the grant was obtained by concealing from the court something material to the case and as such the grant of letters of administration was rightly revoked by Learned Judge of the court below by invoking the provision of Section 263 of the Indian Succession Act, 1925.

5. Learned Judge of the Court below has observed that on revocation of grant of letters of administration the original probate proceeding will revive. Learned Judge of the court below also sent a copy of judgment along with record of probate case no.238 of 1992 to the court of Learned District Delegate, Alipore for information and necessary action. The proposition of law laid down by the Hon'ble Division Bench of our High Court in the case of "Brindaban Chandra Shaha V. Sureswar Shaha Paramanick" reported in 10 CLJ (1909) 263 is that the effect of revocation of the probate is to revive the original proceeding for the grant of probate, and it would be quite competent to the Court to make an order under Section 34 of the Probate and Administration Act. It is held by another Hon'ble Division Bench of our High Court in paragraph 46 of "Southern Bank

Ltd. V. Kesardeo Gianeriwalla” reported in AIR 1958 Cal 377 that grant of probate without citing parties is the just cause for revocation of the grant of probate. It is also held that it is for the parties supporting the will to ask for an opportunity to prove the will again after revocation of the grant of probate and this opportunity must be given provided revocation was not done on the ground that the will was not genuine. It is specifically laid down by the Hon’ble Division Bench in the above decision that where a probate is revoked on the ground of non-citation, the will may be proved again but then the right to prove the will again is in the person wishing to uphold the will. In the case of “Matukdhari Singh V. Mst. Radha Kuer” reported in AIR 1964 Patna 567 the Hon’ble Division Bench of Patna High Court has laid down in paragraph 3 as follows: “The effect of the revocation of the grant of letters of administration was not to revoke the entire proceeding but only to revoke the actual order granting the letters of administration. The original proceedings in the probate case revived after the order of revocation and it was open to the petitioner after the revocation of the grant to apply for the issue of special citations without filing fresh application

for grant of letters of administration.” Similarly in the case of “Arindam Ghosh V. Chittaranjan Ghosh” reported in AIR 2002 Cal 140 the Hon’ble Single Judge has held in paragraph 24 that “since the probate has been revoked the original probate proceeding revives all the heirs and legal representatives in case of the death of intestacy have to be cited.” In view of the above proposition of law, we are of the opinion that on revocation of grant of letters of administration the original probate proceeding being case no.238 of 1992 will revive and it is open to the appellant to apply for issue of citation upon the respondents without filing fresh application for grant of letters of administration. However, the appellant will have to prove the last will and the testament of Bimal Pratibha Ghosh in solemn form in presence of the respondents who have claimed their interest in the estate of the deceased in the capacity of legal heirs of the deceased.

6. Accordingly, the appeal is dismissed. The judgment passed by Learned Additional District Judge, 2<sup>nd</sup> Court, Alipore on 03.09.2003 in revocation case no.84 of 1998 is hereby affirmed. The original probate being case no.238 of 1992 is revived and

the appellant is at liberty to apply for issue of citation upon the respondents to prove the will in accordance with law in presence of the respondents without filing fresh application for grant of letters of administration. There will be no order as to costs.

Let a copy of this judgment and order be sent down to the Learned Court below along with lower court records for favour of information.

Urgent certified photostat copy of the judgment and order, if applied for, be given to the parties as expeditiously as possible after compliance with necessary formalities.

**(R. K. Bag, J.)**

**(Nishita Mhatre, J.)**

