

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.14 of 2021

1. Shri Tapan Dey,

S/O. Lt. Rasaraj Dey,
Resident of A.D. Nagar Road No. 9,
P.O. A.D. Nagar, P.S. West Agartala,
District- West Tripura, Agartala.

2. Shri Shyamal Kalyan Dey,

S/O. Shri Tapan Dey,
Resident of A.D. Nagar Road No. 9,
P.O. A.D. Nagar, P.S. West Agartala,
District- West Tripura, Agartala.

.....Defendant-Respondent-Appellant(s)

Versus

1. Shri Biswanath Dey,

S/O. Lt. Rasaraj Dey,
Resident of A.D. Nagar Road No. 9,
P.O. A.D. Nagar, P.S. West Agartala,
District- West Tripura, Agartala.

2. Smt. Anjana Rani Dey,

W/O. Shri Ranjit Dey,
D/O. Lt. Rasaraj Dey,
Srinagar near Ramthakur College,
P.O. A.D. Nagar,
District- West Tripura, Agartala.

3. Smt. Chameli Rani Dey,

W/O. Shri Chandan Ghosh,
D/O. Lt. Rasaraj Dey,
East Dukli, P.O. East Pratapgarh,
Agartala, District- West Tripura.

4. Smt. Rita Rani Dey,

W/O. Shri Anup Sutradhar,
D/O. Lt. Rasaraj Dey,
A.D. Nagar, Surjya Para,
P.O. A.D. Nagar, Agartala,
District- West Tripura.

.....Plaintiff-Appellant- Respondent(s)

5. Smt. Ratna Rani Dey,

W/O. Shri Tapan Dey,
D/O. Lt. Rasaraj Dey,
Bhati Abhoynagar, Hrishi Para,
P.O. Agartala, District- West Tripura.

..... Plaintiff-respondent- Respondent(s)

6. Smt. Swapna Rani Dey,
W/O. Shri Sambhu Ranjan Datta,
D/O. Lt. Rasaraj Dey,
A.D. Nagar Road No. 11,
P.O. A.D. Nagar, Agartala,
District- West Tripura.

..... Proforma Defendant Respondent(s)

For Appellant(s)	:	Mr. T.D. Majumder, Sr. Adv. Mr. D. Kalai, Adv.
For Respondent(s)	:	Mr. D.R. Chowdhury, Sr. Adv. Mr. S. Sarkar, Adv.
Date of Hearing	:	29.11.2023
Date of delivery of Judgment and Order	:	14.12.2023
Whether fit for Reporting	:	YES/NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 17.04.2021 and 13.05.2021 respectively passed by Ld. Addl. District Judge, Court No.02, Agartala, West Tripura in connection with case No. Title Appeal No. 26 of 2016 allowing the appeal of the plaintiff appellants and setting aside the judgment dated 20.02.2016 and decree dated 27.02.2016 in connection with case No. Title Suit No. 132 of 2011 passed by Learned Civil Judge, Senior Division, Court No.02, Agartala, West Tripura, dismissing the suit for partition amongst the plaintiffs and defendant Nos. 1, 3 and 4 in equal share and also for declaration of purported

Registered WILL Vide No. III-103 dated 25.03.2008 to be illegal, void *ab-anitio* and not binding upon the plaintiffs (respondents).

02. The facts as would be necessary for appreciating the challenge as projected in the Second Appeal may be noted at the outset.

03. That the suit land as mentioned in Schedule A of the original plaint was owned by one Giribala Ghosh(since dead). She executed a Gift Deed in favour of Rasaraj Dey (that is father of plaintiff and defendant Nos.1 and 3 and the grandfather of defendant No.2 in the original suit). Subsequently, the suit land was mutated in the name of Rasaraj Dey and Khatian was prepared in his name Vide No. 546 under Mouja, Badharghat. Said Rasaraj Dey died on 22.03.1999. His legal heirs executed a Registered Deed of partition Vide No. 1-5314 dated 21.07.2007. On the same day, by executing another Registered Sale Deed vide No. 1-5315 dated 21.07.2007 the plaintiffs and the defendant Nos.1 and 3 of the original suit (T.S. 132 of 2011) sold out their share in favour of their mother Gita Rani Dey. Said Gita Rani Dey expired on 04.02.2009 and accordingly her legal heirs became the owner of the suit land as mentioned in Schedule A. No Khatian was prepared in the name of said Gita Rani Dey. Gita Rani Dey was a literate woman could read and write Bengali and due to illness she was admitted to TMC Hospital, Hapania, Agartala on last 04.03.2008. She

was taken to I.C.U, and oxygen mask was placed on her as her condition was very critical. She was unconscious or in a coma position not understanding the circumstances surrounding her. According to the plaintiffs of the original suit, the defendant No.1 made a conspiracy with defendant No.4 to deprive the plaintiffs from their share as mentioned in Schedule A and created a fabricated WILL of the Schedule B land. The defendants of the original suit managed to get forged, thumb impression on the said purported WILL when Gita Rani Dey was lying in the hospital bed. The contents of the WILL were not read over and explained to her and the WILL was not attested properly. Gita Rani dey was not aware about the existence of the said WILL as it was in the custody of defendant No.1(of original suit) beyond the knowledge of other legal heirs or co-sharers of the suit land. In the opinion of the plaintiffs (of original suit), the WILL was illegal, void and not binding upon them and the defendant No.1 was trying to grab the share of other legal heirs. It was the further case of the plaintiffs in the original suit that the suit land as mentioned in schedule A was their ancestral property but, the same was wrongly mutated in the name of defendant No.1 in collusion with the mutation authority. The plaintiffs of the original suit came to know about the existence of WILL on last 24.08.2011 but the defendant No.1 of the original suit was trying to sell the suit land on 14.07.2011 to some other person for which injunction

petition was filed against the defendant for restraining him from changing the nature of the suit land. The plaintiffs of the original suit demanded partition of the suit land as mentioned in Schedule A on last 12.09.2011. But the defendant No.1 refused to make partition of the suit land as mentioned in Schedule A of the original plaint, nor did the defendant No.1 file any prayer for probate for validity of the WILL. So, the plaintiffs prayed for declaration of WILL vide No. III-103 dated 25.03.2008 as void one as well as preliminary decree for partition of the suit land as mentioned in Schedule A. The suit was contested by the defendants of the original suit and finally the Learned Trial Court below dismissed the suit with costs. The operative portion of the order dated 20.02.2016 of the Learned Court below was as follows:

"In the result, this suit stands dismissed on contest with costs.

Plaintiff has failed to prove the suspicious circumstances for declaring the registered WILL vide no.III-103, dated 25.03.2008, as void and hence plaintiffs WILL not get any partition share of the WILL property which is now exclusive domain of defendant nos. 1 and 2 as because finally published khatian is also prepared by the settlement authority after observing all formalities.

As the defendants contested the suit for last 5(five) years to get relief, so the costs is imposed against the plaintiff in this regard.

Thus the suit is disposed of on contest with costs. Prepare decree accordingly."

04. Challenging that judgment the plaintiffs of the original suit (T.S. No. 132 of 2011) preferred appeal before the Court of Learned District Judge, West Tripura, Agartala and the case was numbered as T.A. No. 26 of 2016 and after

that Learned Addl. District Judge, Court No.2, West Tripura, Agartala by judgment dated 17.04.2021 and decree dated 13.05.2021 was pleased to set aside the judgment of the Learned Trial Court passed in T.S. 132 of 2011. The operative portion of the order of the Learned First Appellate Court is reproduced below:

"In the result, the appeal succeeds. The judgment and decree so passed by trial court in TS 132 of 2011 stands set aside.

The registered WILL bearing No. III-103, dated 25.03.2008 being surrounded by suspicious circumstances stands cancelled and delivered up.

The suit land as described in Schedule A of the plaint in TS 132 of 2011 stands liable to be divided / partitioned amongst the appellants, respondent Nos. 1,3 and 4 in equal share. Accordingly, the appellant Nos. 1, 2, 3, 4 (plaintiff Nos. 1, 3, 4 and 5 in TS 132 of 2011) respondent Nos. 1, 3 (defendant Nos. 1 and plaintiff No. 2 in TS 132 of 2011) and 4 (defendant No. 3 in TS 132 of 2011) are entitled to get 1/7th share each over the suit land.

The parties to effect partition of the suit land as per their share as declared herein above within four months. Failing which each party having share in the suit land, as declared herein-above, shall be at liberty to approach the trial court to have the final decree in accordance with law.

To feel contrive for their (parties) reproachable conduct there is no order as to costs.

Prepare decree."

05. Challenging that judgment, the principal defendant Nos.1 and 2 of the original suit (T.S. No. 132 of 2011) have preferred this second appeal as stated above. Before this Court at the time of admission of the second appeal the following substantial question of law was formulated by order dated 16.11.2021.

"Whether the judgment and decree passed by the 1st Appellate Court is perverse?"

06. Mr. T.D. Majumder, Learned Senior Counsel, appearing for the appellants very categorically submitted that if the oral testimonies of the witnesses of the parties

before the Lower Court are consciously scanned by this Court, it would be very clear that there were no suspicious circumstances to disbelieve the WILL executed by Gita Rani Dey in favour of defendant No.1 i.e., the appellant No.1 of this present appeal. He further submitted that the WILL was duly proved as per provisions of Section 63 of the Indian Succession Act, read with Section 68 of the Indian Evidence Act and the evidence of one of the attesting witness was very much trustworthy and the testator was found to be in sound state of mind at the time of execution of WILL, by commission. More so, the evidence of deed writer and also the evidence of the staff of the office of Sub-Registrar were very much convincing and satisfactory and to counter the case of appellant No.1, the respondents of this present appeal could not adduce any convincing oral as well as documentary evidence on record to discard the evidence of the present appellants. But the Learned First Appellate Court did not appreciate the evidence on record properly and came to a wrong conclusion that the registered WILL bearing No. III-103 dated 25.03.2028 was executed under suspicious circumstances. It was fairly submitted by Mr. T.D. Majumder that the 'WILL' was prepared in the month of February 2008 but that could not be executed and registered at that time, rather, the same was executed in commission when the mother of the parties, Gita Rani Dey was admitted in TMC Hospital. But on the body of the WILL it was written that the

same was prepared in the residence of the mother of the appellant No.1 and other respondents and in this regard, due explanation was given and there is no contrary evidence on record that the Testator, Gita Rani Dey was admitted in I.C.U and was in coma and she was wearing mask and was not in a position to execute any WILL and due to her weakness and trembling, she put her thumb impression without putting her signatures on the body of the WILL. It was further submitted by Mr. T.D. Majumder that there was no contrary medical evidence on record that said Gita Rani Dey(testator) was totally incapable to execute any WILL and further more the present appellants before the Learned Trial Court have proved all the aspects regarding due execution of the WILL as per the requirement of law. So, according to Mr. T.D. Majumder, Learned First Appellate Court ignoring the oral and documentary evidence on record came to a wrong finding that the WILL was executed under suspicious circumstances and ultimately cancelled the WILL and thus, reversed the judgment of Learned Trial Court. Learned Counsel, Mr. T.D. Majumder also referred two citations in support of his contention.

07. On the contrary, Learned Senior Counsel Mr. D.R. Chowdhury, representing the respondents of this Second Appeal, quite emphatically submitted that Learned First Appellate Court rightly delivered the judgment setting aside the judgment of the Learned Trial Court cancelling the

purported WILL. He further submitted that from the body of the WILL it would be clear that there was no time given in the WILL when the same was executed. No medical officer was produced to substantiate that Gita Rani Dey was in sound state of mind and more so on the body of the WILL it was clearly mentioned that the WILL was executed at residence. No step was taken to make correction of the WILL. But later on the same was executed in the hospital on commission. Mr. D.R. Chowdhury, further submitted that on the body of the WILL there was one recital that the present respondent No.2 of the second appeal would be permitted to stay on the suit land but said respondent No.2 contested the case by filing written statement denying the claim of the present appellant No.1 and also submitted that the deed was executed at the instance of appellant No. 1 beyond their knowledge which cannot be acted upon. More so, as per law it was the responsibility and the duty of the propounder to satisfy the Court about the genuineness of the WILL which he has failed to discharge in the case. So, according to Learned Senior Counsel, Learned First Appellate Court has rightly delivered the judgment setting aside the judgment of the Learned Trial Court and submitted that there is no merit in the Second Appeal and prayed for dismissal of the same and also relied upon some citations regarding suspicious circumstances and also submitted that the principles of the cases are very much relevant for decision of this present

appeal and since the present appellants have failed to show that the testator was sound to execute the WILL on that relevant point of time and regarding preparation of the same sitting at residence could not be clearly explained by the present appellants i.e. the propounder of the WILL. Hence, Learned Senior Counsel prayed for dismissal of the Second Appeal with costs.

08. From appreciation of the rival contention the pertinent questions as surfaced for consideration by this Court are:

1. Whether disputed WILL was at all executed by Gita Rani Dey, the testator.
2. Whether the testator was in sound testamentary or disposing mind at the time of execution of the questioned WILL?
3. Whether the execution of the WILL is attended by any suspicious circumstances?

09. The parameters for ascertaining the proper execution of the WILL have well been recognized by various decisions of the Apex Court and High Court.

10. Learned Senior Counsel, Mr. D.R. Chowdhury in course of hearing as discussed earlier referred some citations.

11. In **Yashoda Gupta, Petitioner v. Suniti Goyal and Ors., Respondents** reported in **AIR 2002, Delhi 20**, the Hon'ble Delhi High Court has elaborately dealt on the

various aspects regarding suspicious circumstances as follows:

"101. There are, therefore, three things to be kept in mind, in cases such as this:-

(i) The propounder of a Will has to prove its due and valid execution.

(ii) If there are any suspicious circumstances surrounding the execution of a Will, the propounder must remove the suspicions by cogent and satisfactory evidence.

(iii) The application of the above principles depends on the facts and circumstances of each case.

118. Considering the various authorities cited before me, it is quite clear that whether a WILL is genuine or not has to be decided on the facts of each case. There is no mathematical equation to determine whether a Will is genuine or not. The authenticity of a Will depends on the circumstances surrounding its execution and the quality of the evidence that is led in respect of its genuineness."

12. In Gurdial Kaur and others, Appellants v. Kartar Kaur and others, Respondents reported in 1998 Supreme Court 2861, Hon'ble the Supreme Court observed as under:

"4. The law is well settled that the conscience of the Court must be satisfied that the Will in question was not only executed and attested in the manner required under the Indian Succession Act, 1925 but it should also be found that the said Will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the Will. Therefore, whenever there is any suspicious circumstance, the obligation is cast on the propounder of the Will to dispel suspicious circumstance. As in the facts and circumstances of the case, the Court of Appeal below did not accept the valid execution of the Will by indicating reasons and coming to a specific finding that suspicion had not been dispelled to the satisfaction of the Court and such finding of the Court of Appeal below has also has been upheld by the High Court by the impugned judgement, we do not find any reason to interfere with such decision. This appeal, therefore, fails and is dismissed without any order as to costs."

13. The Hon'ble Supreme Court in **Kabita Kanwar v. Mrs. Pamela Mehta and Others** reported in **AIR Online 2020 Supreme Court 2614** further observed as under:

"24.4. We may also usefully refer to the principles enunciated in the case of *Smt. Jaswant Kaur v. Smt. Amrit Kaur and Ors.*, reported in (1977)1 SCC 369: (AIR 1977 SC 74) for dealing with a WILL shrouded in suspicion, as follows: –

"9. In cases where the execution of a Will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the Will is such as to satisfy the conscience of the court that the Will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the Will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the Will.

(Emphasis supplied) "

14. In **Timir Baran Ghosh, Appellant v. Dilip Kumar Ghosh and Ors., Respondents** reported in **2014 1 TLR 485**, this Court was also pleased to observe as under:

"16. In *Gurdev Kaur & Ors. vs. Kaki & Ors.* reported in *AIR 2006 SC 1975* the apex court has again considered the ambit and purport of Section 63 of the Indian Succession Act, 1925 and has held as under:

"76. The High Court has clearly deviated from the settled principle of interpretation of the WILL. The Court does not sit in appeal over the right or wrong of the testator's decision. The Court's role is limited to examining whether the instrument propounded as the last WILL of the deceased is or is not that by the testator and whether it is the product of the free and sound disposing mind. It is only for the purpose of examining the authenticity or otherwise of the instrument propounded as the last WILL, that the Court looks into the nature of the bequest."

20. The element of exclusion of the legal heirs while making the disposition creates suspicious circumstances or not has been dealt by the apex court in *Rabindra Nath Mukherjee and Another v. Panchanan Banerjee (dead) by L.Rs. and Others*

reported in AIR (1995) SC 1684 in no uncertain terms as under:

"4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of Will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of Will; of course, it may be that in some cases they are fully debarred and in others only partially. As in the present case, the two executors are sons of a half-blood brother of Saroj Bala, whereas the objectors descendants of a full blood sister, the disinheritance of latter could not have been taken as a suspicious circumstance, when some of her descendants are even beneficiaries under the Will."

"24. On such aggregate consideration on the touchstone of law as decided by the Apex Court, this Court has no hesitation to hold that even if it is held that the execution of the Will has been proved but the said execution is attended by those suspicious circumstances and such suspicious circumstances could not be removed by way of adequate evidence. It is to be further noted that at the same time the respondents have failed to prove that the said Will is manufactured or that their father did not sign over the testament by adequate evidence. Even the statement of OPW-2 for purpose of testamentary state of mind cannot be wholly accepted in view of his varying assertion in different parts of oral testimony. Thus to prove the allegations as was with the respondents has not been properly discharged. Therefore, the contention that the Will was not (*sic*) executed or manufactured by the appellant is not accepted by this Court. But since the appellant could not eradicate completely those suspicious circumstances as catalogued, the trial court has committed no illegality in refusing to grant probate of the Will in question. As corollary thereof, this appeal stands is dismissed.

15. Referring the aforesaid citations, Learned Senior Counsel further submitted before this Court that even if it is held that the execution of the WILL has been proved but the execution of the same is attended by suspicious circumstances, which could not be removed by adequate evidence by the propounder, so, there is no scope to place any reliance on the execution of the purported 'WILL' as genuine in the case.

16. He further submitted that the Learned First Appellate Court after taking into consideration all these aspects came to the finding that the WILL was executed under suspicious circumstances and as such rightly reversed the judgment of the Learned Trial Court below.

17. On the contrary, Learned Senior Counsel, Mr. T.D. Majumder for the appellants has very categorically referred the provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act and submitted that the WILL was duly executed and was proved by the propounder without any suspicion and from the recitals of the WILL, the very intention of the testator was duly proved. Only the fact of mentioning the place of execution of WILL at residence, there is no scope to disbelieve its execution and submitted that Learned Trial Court below rightly delivered the judgment but the Learned First Appellate Court mis-appreciated the evidence on record and gave an erroneous finding.

18. Now for the sake of convenience, I would like to refer herein below the relevant provision of Section 63 of the Indian Succession Act, 1928 and Section 68 of the Indian Evidence Act:

Section 63 of the Indian Succession Act, 1928:

63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:—

(a) The testator shall sign or shall affix his marks to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Section 68 of the Indian Evidence Act:

“68. Proof of execution of document required by law to be attested.-- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a WILL, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]”

19. As referred by the Learned Senior Counsel for the appellants in **Meena Pradhan and Others, Appellants v. Kamla Pradhan and Another, Respondents**, Hon'ble the Supreme Court observed as under:

10.(ix)The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

(x) One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to

dispel such suspicious circumstances by giving a cogent and convincing explanation.

(xi) Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances.

12. Coming to the facts of the case, a careful perusal of the relevant material on record and applying the provisions and the case laws it is evident tht the Will was duly executed by the testator in the presence of witnesses out of his free Will in a sound disposing state of mind and the same stands proven through the testimony of one of the attesting witnesses, namely, Suraj Bahadur Limboo who was examined as PW-2 by the Civil Court. This witness categorically states that the testator executed the Will in question and, both he and the testator signed the Will in the presence of each other.

20. Here in the case at hand both the parties of this appeal have adduced their oral/documentary evidence on record. The plaintiffs of the Original Suit (T.S. 132 of 2011) have adduced 4(four) witnesses and relied upon some documentary evidences which were marked as Exhibits 1 to 4. On the other hand, the contesting defendants of the original suit i.e. the present appellants have adduced five witnesses including the appellant defendant No.1 and also relied upon documentary evidences which were marked as Exhibit A to Exhibit I. The contesting plaintiffs i.e. the respondents of the preset appeal thoroughly cross-examined the witnesses of the defendant appellants. In this case the

main contention was that the WILL was executed by Gita Rani Dey in favour of appellant defendant No.1 which the plaintiffs respondents have challenged and it was asserted that the WILL was executed beyond their knowledge and it was executed when the mother of the appellant No.1 and the defendants was admitted in the hospital and she was admitted in I.C.U, having mask and was in coma. So, there was no scope on her part to execute any WILL. To substantiate the WILL as a valid one, the appellants have adduced witnesses. DW1 in his cross examination stated that at the time of execution of the WILL their mother was admitted in the hospital and she was admitted in the hospital on 03.03.2008. He further stated that Oxygen mask was given to her mother when she was facing difficulties in breathing and their mother was discharged from the hospital on 14.03.2008. He further stated the WILL was prepared in the month of February 2008 and also stated that the WILL was executed in presence of Commissioner, Smt. Anjali Debroy, appointed from Sub-Registry Office Pradip Kr. Paul, scribe Indu Bhushan Shil and he himself. DW2, Dayamoy Chakraborty in his examination-in-chief, supported the version of appellant defendant No.1. In his cross-examination he stated that the maker of the WILL was his religious sister. In the month of June, 2007, Gita Rani consulted with him with intention to make her WILL but that time she did not prepare any WILL and she was in sound

state of mind having good health. Also stated that the WILL could not be completed in the month of February 2008 when she was fit and on 03.03.2008 Gita Rani was admitted in the hospital for her treatment. That time, she was suffering from illness but was not in dying condition. Also stated that WILL was executed in the hospital and Gita Rani had writing disabilities during her illness period.

21. DW3, Pradip Kr. Paul, in his examination-in-chief stated that on 11.03.2008 at the time of execution of WILL, he went to General Ward of Tripura Medical College, along with one Indu Bhusan Shil and at the time of execution he was present and before execution the contents of the WILL were read over to Gita Rani Dey in front of him when the propounder Tapan Dey and other relatives of Gita Rani Dey including Deed Writer, Debananda Choudhury were present. He also stated that at the time of putting signature said Gita Rani Dey told him that she will put her thumb impression as she had trembling on her hand due to weakness. He also stated that at the time of execution of the WILL the executant/ testator was normal and capable to recognize each and every person of her family and the witness identified her signature on the WILL.

22. DW4, Indu Bhusan Shil, is the scribe of the WILL who had drafted the WILL as per desire of the testator and took permission for getting its execution through commission on 11.03.2008 and identified the WILL. In his examination-

in-chief, he further stated that though the WILL was shown to be executed in the residence of Gita Rani Dey on 11.03.2008 but actually it was executed while she was under treatment in the General Ward of TMC on 11.03.2008. But due to inadvertence he did not make correction as to the actual place of execution of the WILL. Thus, no correction was made in the WILL regarding actual place of execution. During cross examination, he stated that after returning from hospital Gita Rani Dey was alive for another eleven months. Nothing more came out relevant.

23. CW1, the Court witness Anjali Debroy in course of her examination by the appellant defendants stated that the WILL was presented on 11.03.2008 and execution was on the same day but registration was held on 25.03.2008. The testator, Gita Rani Dey bequeathed her property to her son Tapan Dey and grandson Shyam Kalyan Dey and also stated as the WILL was executed on commission, she went to Ambedkar Hospital when the executant was identified by Deed Writer, Indu Bhusan Shil. She examined Gita Rani Dey in the hospital and found her fit and in sound mind for making WILL at that time and she was further tested as to whether the WILL was made voluntarily. She also stated Gita Rani Dey put her thumb impression in the WILL because at that time due to weakness her hand was vibrating. So, she put her thumb impression instead of putting signature. Her further evidence is that the other witnesses namely

Debananda Chowdhury, Pradip Kumar Paul also signed in her presence in the WILL after thumb impression of Gita Rani Dey. During cross-examination by the plaintiff respondents she further stated that at the time of making WILL Gita Rani Dey was able to speak in the hospital and she was not having any oxygen mask in her mouth.

24. From the evidence on record it is clear that the respondent plaintiffs by the art of cross-examination of the witnesses of the appellant defendants could not create any cloud or doubt regarding execution of the purported WILL executed by Gita Rani Dey in favour of the present appellants. From the exhibited documents of the appellants before the Learned Court below further it appears that the testator was admitted in the hospital on 03.03.2008 and she was discharged on 14.03.2008 from the General Ward of Department of Medicine. There is no any contrary evidence on record that she was in coma and was also in I.C.U and there is also no evidence on record that she was not in a position to put her signature or thumb impression. So for non-production of Medical Officer when the representative of the Sub-registry Office who went on commission very categorically stated that the testator was in sound state of mind at the time of execution of WILL and there was no scope to disbelieve the due execution of the 'WILL'. It is also on record that the testator expired after a further period of eleven months after being discharged from the hospital.

From the recitals of the WILL it is very clear that the testator very clearly in the WILL has narrated as to why she bequeathed her share of property to the present appellants. Only because the place of preparation of WILL is shown to have been written in the residence, it cannot be said that the WILL was doubtful and it was not properly executed as due explanation was given by the Deed Writer who drafted the WILL in course of his evidence. More so, on scrutiny of the WILL, this Court does not find any ambiguity as regards the disposition of the WILL and furthermore, it also appears that in execution of the WILL Section 63 of the Succession Act and 68 of the Indian Evidence Act have been duly complied with. So, the observation of the Learned First Appellate Court appears to be based on misconception of fact and law. The principles laid down in the aforesaid citations are very much relevant in a case of execution of WILL under suspicious circumstances. But the said principles in my considered view cannot be applied in this case as the appellants (defendants) could prove the WILL as per the provisions of the Succession Act as well as the Indian Evidence Act.

25. In the result, the appeal succeeds. The judgment dated 17.04.2021 and the decree dated 13.05.2021 passed by the Learned Addl. District Judge, Court No.2, West Tripura, Agartala is hereby set aside and the judgment dated 20.02.2016 and decree dated 27.02.2016 passed by the

Learned Civil Judge, Senior Division, Court No.2, Agartala,
West Tripura stands affirmed.

Prepare the decree accordingly.

Send down the LCRs.

JUDGE



**MOUMITA
DATTA**

Purnita

Digitally signed by
MOUMITA DATTA
Date: 2023.12.16
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