

**HIGH COURT OF TRIPURA
AGARTALA
FA NO.03 OF 2021**

Sri Pintu Deb,

Son of Late Pabitra Chandra Deb,
Resident of Bishalgarh, P.S.- Bishalgarh,
District- Sepahijala, aged about-47 years,
By profession- Business, by faith Hindu,
Citizen of India

..... **Appellant(s)**

Vs.

1. Smt. Basana Bala Deb,

Wife of Late Pabirta Chandra Deb,
Resident of Bishalgarh, P.S.- Bishalgarh,
District- Sepahijala.

2. Sri Biplab Deb,

Son of Late Pabirta Chandra Deb,
C/o Partha Roy, Resident of Santipara,
P.S. East Agartala, District- West Tripura.

3. Smt. Ajanta Deb(Banik),

Wife of Sri Jantu Banik,
Daughter of Late Pabitra Chandra Deb,
Resident of Ashram Road, P.S.- East Agartala,
District- West Tripura.

4. Smt. Sumanta Deb,

Wife of Ratan Deb(Banik),
Daughter of Late Pabitra Chandra Deb,
Resident of Konaban, P.S.- Bishalgarh,
District- Sepahijala.

..... **Respondent(s)**

For the Appellant(s) : Mr. N. Chowdhury, Advocate.

For the Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate.
Mr. S. Saha, Advocate.

CO(FA) NO.3 OF 2022

1. Sri Biplab Deb,

S/o- Late Pabirta Chandra Deb,
Flat No.1, Bastu Infrastructure, Old
Motorstand, Annapurna Goli, P.S.- East Agartala,
District- West Tripura.

2. Smt. Ajanta Deb(Banik),

W/o Sri Jantu Banik, D/o- Late Pabitra Chandra Deb,
Resident of- Jail Ashram Road, P.S.- East Agartala,
District- West Tripura.

..... **Respondent-Cross Objector(s)**

Vs.

1. Sri Pintu Deb,

S/o Late Pabitra Chandra Deb,
P.O & P.S. Bishalgarh, District- Sepahijala.

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

2. Smt. Basana Bala Deb,

W/o- Late Pabitra Chandra Deb,
P.O. & P.S. Bishalgarh, District- Sepahijala.

3. Smt. Sumanta Deb, W/o Sri Ratan Deb(Banik),
D/o Late Pabirta Chandra Deb,
Resident of Kunaban, P.S.- Madhupur,
(Previously- Bishalgarh P.S.) District- Sepahijala.

.....**Respondent(s)**

For the Appellant(s) : Mr. S.M. Chakraborty, Sr. Advocate.
Mr. S. Saha, Advocate.

For the Respondent(s) : Mr. N. Chowdhury, Advocate.

Date of hearing : 19.04.2023

Date of delivery of
Judgment & Order : 27.04.2023.

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER

Both this appeal and cross objection are tagged, heard, and taken up together for disposal since they arise from a common Judgment and Award dated 08.07.2020 passed in T.S. (Probate)02 of 2015

2. The brief fact of the case is that the appellant herein Sri. Pintu Deb filed an application under Section-276 of the Indian Succession Act, 1956, praying for granting Probate of Registered WILL No.III - 13 of 2012 dated 21.02.2012 executed by his father Pabitra Ch. Deb (since deceased) S/o Late. Prafulla Chandra Deb, resident of Bishalgarh, P.S. Bishalgarh, Sub-Division-Sepahijala and Sub- Registry – Bishalgarh. It is stated in the said petition that Lt. Pabitra Ch. Deb was a Hindu and governed by Hindu Succession Act. In that petition, the appellant herein has made Smt. Basana Bala Deb, W/o. Lt. Pabitra Ch. Deb, Sri. Biplab Deb, S/o. Lt. Pabitra Deb, Smt. Ajanta Deb (Banik), D/o. Of Lt. Pabitra Ch. Deb and Smt. Sumanta Deb, as respondents. It is stated in the petition that

Pabitra Ch. Deb, S/o. Lt. Prafulla Ch. Deb was his father and died on 13.07.2013, leaving the appellant and opposite parties/respondents as his legal heirs. Prior to his death, Pabitra Ch. Deb (since deceased) S/o. Lt. Prafulla Ch. Deb, the resident of Bishalgarh, executed the registered WILL No.III-13 of 2012 dt.21.02.2012, being in sound mind by which, 21 satak of land classified as "vitti (Naal)" & "Dokan (Naal), appertaining to Sabek daag nos.3565/ 15539 (P), 3565/15539 (P) & 7864, corresponding to R.S. plot nos.5709, 5710/12876 & 6666, recorded under khatian No.331, Touji No.3519 of Mouja-Bishalgarh, Sub- Division Bishalgarh, District Sepahijala, was bequeathed in favour of the appellant herein i.e. Sri Pintu Deb. It was also stated in the petition that property contained in the WILL is within the jurisdiction of the Court and likely to be valued at Rs.10,00,000/- and that no application was made in any other Court for grant of Probate and that at the time of his death, the deceased had a fixed abode within the jurisdiction of Court below. The appellant herein, therefore, prayed to grant a certificate of the Probate in respect of the WILL.

3. On receipt of the petition, the same was registered as Misc.(Probate)05 of 2013. Notices were served upon all the opposite parties/respondents and in response to the

said notices, except opposite party no.1, Smt. Basana Bala Deb, all other opposite parties have made their appearance before the Court and the case proceeded ex-parte against the opposite party Smt. Basana Bala Deb vide this Court's Order dt.27.04.2019.

4. In response, the opposite party no.2 to 4 therein have submitted written statement raising their objection against granting Probate to the appellant by taking the plea that the petition is not legally maintainable and averments made in the petition are denied in the objection. It is stated in the written statement that the contents of the WILL is not genuine. It is also stated by the opposite parties therein that Lt. Pabitra Ch. Deb was their father and no WILL has been executed by their father as alleged, whereby he bequeathed his landed property measuring 21 Sataks in favour of the appellant by depriving them and without their consent as he loved them very much. Hence, the opposite parties pray for the dismissal of the suit with cost.

5. It appears from the record that no issues were framed in that case, but the witnesses were examined and cross-examined accordingly. So, for the convenience of discussion, the following issues were formulated:-

"(i) Whether the Probate proceeding is maintainable in law?

(ii) Whether the Will dt.21.02.2012 registered on the same date was only executed by Pabitra Ch. Deb with sound mind and health?

(iii) Whether the petitioner is entitled to get Probate of the aforesaid Will dt.21.02.2012?"

6. In the course of the trial, to prove his case, the petitioner-appellant has examined three witnesses including himself, and exhibited some documents. They were duly cross-examined by the opposite parties. On the other hand, the opposite parties did not adduce any evidence either oral or documentary in support of their Case.

7. The learned Court below heard the arguments of both the parties and held that the appellant-petitioner has sufficiently proved the execution of WILL by the testator in his sound mind and health. The Court below found the evidence of P.W.2 and P.W.3 reliable and trustworthy, so far as the signature made by the deceased Pabirta Chandra Deb is concerned, the learned Court below opined that the respondents fail to bring out any suspicious circumstance surrounding the execution of the WILL by the testator and the issues were answered in affirmative and in favour of the appellant. But the Court below dismissed the prayer of the appellant for grant of probate in view of the findings of issue no.(i). The operative

portion of the said Judgment and Order dated 08.07.2020 is given as under:-

"In the written statement, the opposite parties took the plea that the Will is not genuine, rather no Will has been executed by their father as alleged and that he never did any act without consulting with them. In spite of the pleadings above, the opposite parties did not come up in the witness box to support the plea taken in their written statement. On looking at the evidence of PW-2 and PW-3 appear that so far the fact of execution of the Will by Pabitra Ch. Deb is concerned, the opposite parties failed to create any doubt over the same. The evidence of PW-2 and PW-3 are found reliable and trustworthy, so far as the signature made by deceased Pabitra Ch. Deb is concerned. The opposite parties failed to bring out any suspicious circumstances surrounding the execution of the Will by the testator.

Considering all these aspects, I have hold that the petitioner has sufficiently proved the execution of the Will (Exbt.1) by the testator in his sound mind and health. As such, the present issue is answered in affirmative and in favour of the petitioner.

Issue no.(iii) : *I have taken into consideration the discussions made above and the findings of both the issues and is of the opinion that the petitioner is not entitled for grant of probate in view of the findings of the issue no.(i).
The issue no.(iii) is decided accordingly.*

ORDER

8. *In the result, the petitioner's prayer for grant of Probate is hereby dismissed.*

8. Aggrieved and dissatisfied with the judgment and decree dated 08.07.2020 passed in Title Suit(Probate) No.02 of 2015, the appellant of FA No.03 of 2021 has filed the said appeal praying to set aside the Judgment and Decree dated 08.07.2020, passed in Title Suit(Probate) No.02 of 2015 and allow the present appeal.

9. CO(FA)03 of 2022 has been filed under Order 41 Rule 22 of the Code of Civil Procedure by the respondent cross

objectors against the Judgment and decree dated 08.07.2020 in Title Suit(Probate)02 of 2015 passed by learned Addl. District Judge, Court No.4, West Tripura Agartala.

10. The respondents cross objectors are aggrieved by the findings in Issue No.2 by the Court below, wherein the Court below held that "*Considering all these aspects, I have hold that the petitioner has sufficiently proved the execution of the will (Exbt-1) by the testator in his sound mind and health.*" According to the respondents' cross objectors, the learned Court below should have decided issue No.2 against the Plaintiff-petitioner-appellant.

11. Heard Mr. N. Chowdhury, learned counsel appearing for the appellant in F.A. No. 03 of 2021 and for respondents plaintiff-appellant-respondent in CO(FA) No.03 of 2022. Also heard Mr. S.M. Chakraborty, learned Sr. counsel assisted by Mr. S. Saha, learned counsel appearing for the respondents in F.A. No.03 of 2021 and respondent cross objector in CO(FA) No.03 of 2022.

12. Mr. N. Chowdhury, learned counsel appearing for the appellant submits that Court below has mis-appreciated the evidence on record and contents of the WILL and thus came to a wrong and perverse finding which is not tenable in the eye of

the law. The Trial Court below ought to have considered the registered WILL No.III dated 21.02.2012(Exbt-1) and other exhibited documents filed by the appellant and ought to have granted probate of the said registered WILL. The learned Court below considered that the respondents failed to bring out any suspicious circumstance surrounding the execution of the WILL by the testator. But the learned Court below unfortunately considered that the appellant is not entitled to grant of probate.

13. On the other hand, Mr. S.M. Chakraborty, learned Sr. counsel assisted by Mr. S. Saha, learned counsel appearing for the respondents in F.A. No.03 of 2021 and respondent cross objector in CO(FA) No.03 of 2022 submits that none of the signatures of the impugned WILL allegedly put by testator Pabitra Chandra Deb, was identified by any of the witnesses and accordingly, no signature of the testator was marked as exhibit by the Trial Court. The signature of the alleged second witness viz. Babul Debnath on the alleged WILL has not been proved and marked as an exhibit, even in the entire evidence on record, there is no whisper about the presence of the second witness. In the alleged WILL, it was stated by the testator that his younger son(Respondent No.2 Sri Biplab Deb) resides at a distant place by constructing his own homestead and by running his own

business, leaving peacefully along with his wife, son, and daughter. But in the cross-examination, petitioner Sri Pintu Deb, P.W.1 admitted that his younger brother, Biplab Deb is still residing in a rented house at Santipara at Agartala. So the averment made in the alleged WILL that younger son staying along with his wife, son, and daughter at a distant place by constructing his own house is false. Another false averment made by the testator in the alleged WILL is that "the scheduled property is totally free from all encumbrances", which was however false, P.W.1 Sri Pintu Deb in his cross-examination admitted that the property involved in the WILL was under mortgage to the Indian Overseas Bank as his father took loan from the Bank by way of mortgaging the landed property involved in the impugned WILL. He also stated that the said loan was repaid with the amount received from the Life Insurance Policy of deceased testator Pabitra Chandra Deb and the residue small amount was repaid by him to the Bank and accordingly, he received the Mortgage deed from the Bank. All the natural heirs (wife, son & daughter) except the propounder i.e. eldest son P.W.-1 Pintu Deb were excluded from having any share of the impugned property, the present market value of which would be not less than 7(seven) crores. Neither wife nor any

friend, or any independent person was attesting witness of the alleged WILL. Hon'ble Supreme Court in several decisions held that the mere fact of the WILL being a registered document does not dispel all suspicion about the validity of the WILL.

14. Heard both sides and perused the evidence on record.

15. The learned Court below dismissed the prayer of the appellant for grant of probate in view of the findings of issue no.i. While deciding the said issue No.i, the Court below held thus:-

"Issue no.(i) : These issue relates to maintainability of the Probate petition. In this Case, the petitioner has filed the petition U/S-276 of the Indian Succession Act for grant of probate claiming that he is the protector and receiver of the Will (Exbt-1). Section 222(i) of the Indian Succession Act envisages that Probate shall be granted only to an "Executor" appointed by the Will concerned. Section 222(ii) of the Act also provides that appointment may be expressed or by necessary implication. However, on going through the Will (Exbt-1), it appears that except making bequeath of the property mentioned in the schedule in favour of the petitioner, there was no specific mention that the petitioner Pintu Deb was appointed as executor of the aforesaid Will. There was even no whisper regarding appointing the petitioner as an executor of the Will either expressly or impliedly.

Under these circumstances, a petition filed U/S-276 of the Indian Succession Act for grant of Probate is not maintainable in law. I therefore, answer this issue in negative and against the petitioner.

16. After proper perusal of the discussion made in Issue No.1 of the impugned judgment, this Court finds that the same is just and proper and is based on material evidence and in accordance with established norms of law and needs no

interference. The same is confirmed. Accordingly, the present F.A. is dismissed.

17. Now for deciding the issue as impugned in the cross objection let us reproduce Section 232 and Section 234 of the Indian Succession Act, 1925:-

"232. Grant of administration of universal or residuary legatees.—

When—

(a) the deceased has made a Will, but has not appointed an executor, or
(b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the Will, or
(c) the executor dies after having proved the will, but before he has administered all the estate of the deceased, a universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

234. *Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.—When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly.*

18. In so far as Issue No.ii before the Court below is concerned, this Court finds force in the submission of Mr. S.M. Chakraborty, learned Sr. counsel that there is suspicious circumstance relating to the impugned WILL. Further, in terms of the of above-mentioned Sections of the Indian Succession Act, the case of the Cross objectors stands in the eye of the law. Accordingly, the same is reversed holding the issue in favour of the respondents-cross objector. As such the Cross-objection as filed by the respondents-cross objector is allowed.

19. As a sequel, stay if any stands vacated, pending application(s), if any also stands closed.

JUDGE

suhanjit

