GAHC010252972025

2026:GAU-AS:13655

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Test.App./14/2025

BIBHUTI BHUSHAN GOSWAMI
SON OF LATE BINOD BIHARI GOSWAMI,
RESIDENT OF 1st LINK ROAD, LANE NO.14,
PO & PS- SILCHAR, CACHAR DIST. PIN-788006

2: PRASENJIT SHARMA
S/O NINMOY SHARMA
R/O JANATA LANE
ASSAMESE BASTI
SILCHAR, CACHAR
PIN 78800

VERSUS

THE DISTRICT COMMISSIONER
CACHAR DISTRICT
SILCHAR, PIN 788001

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellants : Mr. F. Z. Mazumder, Advocate

For the Respondent : Ms. D. D. Barman, Addl. Sr. Govt. Advocate

Date of Hearing

& **: 14.09.2026**

Date of Judgment

JUDGMENT & ORDER

1. Heard Mr. F. Z. Mazumder, the learned counsel for the appellants. Also heard Ms. D. D. Barman, the learned Additional Senior Government Advocate appearing for the sole respondent.

2. The learned Additional Senior Government Advocate has submitted that this appeal has been preferred by the petitioners impugning the decision of the Probate Court in not granting the probate as was prayed by the present petitioners. She submits that the respondent No. 1 i.e., the Deputy Commissioner, Cachar has no stake involved in the instant appeal. She submits that neither respondent No. 1 is a necessary party nor proper party and he has been wrongly impleaded as respondent in this case. As such, she prays for striking out the name of Deputy Commissioner from the memo of appeal in this appeal.

3. This appeal under Section 384 of the Indian Succession Act, 1925, has been preferred by the appellants, namely, *Bibhuti Bhushan Goswami and Prasenjit Sharma* impugning the judgment and order dated 19.08.2025, passed by the Court of learned District Judge, Cachar, in Misc. (Probate) Case No. 16/2022, whereby the grant of probate, in respect of the last Will of Late Chaya Bhattacharjee, as was prayed for by the present appellants was rejected by the Probate Court.

4. The facts relevant for consideration of the instant appeal, in brief, are that both the appellants had approached the Court of learned District Judge,

Cachar, by filing an application under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of the last Will of the deceased Chaya Bhattacharjee. It was pleaded by them in the aforesaid petition that Chaya Bhattacharjee had executed an unregistered Will on 10.12.2022 bequeathing a flat measuring 520 sq. ft. along with undivided proportionate share of the right of land covered by 2nd R.S. Patta No. 101, Dag No. 141 of Mouza-Tarapur, Part VII, Pargona- Barakpar in favor of the present appellants. The execution of the said Will was attested by two attesting witnesses, namely, Ninomy Sharma and Maya Rani Das. The present appellants, who are the nephew as well as grandson of the deceased, were also made the executor of the said Will. Since the deceased had no legal heirs apart from the appellants, a general notice was issued regarding filing of the probate case by the present appellants. The said notice was served by affixing the same at the last known address of the deceased, near relative and the office of the Collector of Cachar district. The service of notices was duly confirmed and no objection was filed against the petition filed by the present appellants. The property was also valued and the valuation report was duly accepted. However, by the judgment and order dated 19.08.2025, which has been impugned in this appeal, the Trial Court rejected the prayer for grant of probate mainly on the plea that the attestation of the Will by independent witnesses was not proved as per requirement contained in Section 63(c) of the Indian Succession Act, 1925.

5. Mr. F. Z. Mazumder, the learned counsel for the appellants has submitted that the Probate Court has erred in rejecting the prayer for grant of probate merely taking a too much technical view of the matter and coming to a conclusion that strict compliance of Section 63(c) of the Indian Succession Act, 1925 could not be proved by the present petitioner during the aforesaid probate

proceeding. He submits that though the attesting witnesses, namely, Ninmoy Sharma, who was examined as PW-2 and Maya Rani Das, who was examined as PW-3, have verified the petition filed under Section 276 of Indian Succession Act, 1925 for grant of probate by the present appellants that they were present and saw the testator affixing her signatures in her last Will in sound health and mind voluntarily. He further submits that they, while deposing as PW-2 and PW-3 respectively, have also stated categorically that Exhibit- 1 is the Will which is executed in their presence and they have put their signatures thereon as attesting witnesses.

6. The learned counsel for the appellants submits that the Probate Court ought to have taken into consideration the verification given by the attesting witnesses in the probate application wherein they had categorically stated that both of them had seen the deceased testator affixing her signature in her last Will in a sound state of health and mind.

7. He further submits that in the evidence on affidavit, which was submitted by the attesting witnesses as PW-2 and PW-3, the phrase "executed in my presence", only means that the attesting witnesses have seen the testator affixing her signature in the Will. However, the Probate Court took too technical approach and rejected the application filed by the appellants under Section 276 merely because the attesting witnesses did not specifically mention in their affidavit that they have seen the testator sign or affix her mark to the Will and also put their signature in the Will in the presence of the testator. He submits that in a probate case, the applicants are required to prove the validity and execution of the Will and the Court has to look into only two aspects, firstly, that the Will is executed by the testator, and secondly, that it was the last Will

executed by her.

8. He further submits that these facts are not to be proved by the applicant with mathematical accuracy as per the language used in Section 63(c) of the Act, but if it appears from the evidence on record that there has been compliance of Section 63(c) in as much as the attested witnesses have seen the testator affixing her signature on the Will and thereafter they also put their signatures on the said Will in the presence of the testator it may be regarded that the requirement of Section 63(c) are complied with. In support of his submission, the learned counsel for the appellants have cited following ruling: -

(i) "***Meena Pradhan and Ors. Vs.Kamla Pradhan and another***" reported in "***(2023) 9 SCC 734***"

9. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the ruling cited by the learned counsel for the appellants in support of his submissions.

10. For grant of probate under Section 276 of the Indian Succession Act, 1925, the Probate Court has to ascertain the genuineness of the Will of which probate is sought for. It has to ascertain as to whether the Will was validly executed by the testator and whether it was his or her last Will. An unprivileged Will, to be duly executed, must fulfill the requirement as provided for in the Section 63 of the Indian Succession Act, 1925 which provides as follows: -

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 mark 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 acknowledgement of his signature or mark, or 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.

11. If we peruse the aforesaid provisions, it appears that for due execution of the Will, the testator shall have to sign or affix his or her mark to the Will or it may be signed by some other person, by his or her direction, in his presence. 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. Most importantly, the Will shall be attested by two or more witnesses, each of whom, has seen the testator signing or affixing his or her mark to the Will, or has seen some other person signing the Will in presence of and by the directions of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or signature of such other person, and each of the witness shall sign the Will in the presence of

the testator.

12. Thus, the due execution of the Will would mean that the requirement prescribed in Section 63 of the Indian Succession Act, 1925 have been fulfilled. In the instant case, both the attesting witnesses while deposing as PW-2 and PW-3 have stated that the deceased Chaya Bhattacharjee has made and published her last Will which was executed in their presence and they also put their signature as attesting witnesses thereon. The deposition of the PW-2 and PW-3 remained uncontroverted as they were not cross-examined by anyone, neither the Probate Court have put any questions to them.

13. Under the aforementioned circumstances, this Court is of considered opinion that when the attesting witnesses have deposed that the Will, which is exhibited as Exhibit-1 has been executed in their presence by the testator, it only means that the testator had put her signature on the said Will in their presence. The Probate Court cannot ignore the testimony of the attesting witnesses when they have categorically stated that the Will was executed in their presence. Moreso, when such testimony remained uncontroverted. The meaning which has to be ascribed to the word "executed", under such circumstances, is the meaning given to the word "execution" in the Section 63 of the Indian Succession Act, 1925, itself. Mere omission of mentioning in minute details, the steps provided for in Section 63 (a), (b) and (c) of the Indian Succession Act, 1925 by the attesting witnesses may not be a ground to discard their testimony when they have categorically deposed that the Exhibit-1 (Will) was executed by testator Chaya Bhattacharjee in their presence.

14. Under such circumstances, the execution of Will, which was exhibited as Exhibit- 1, has been duly proved by the attesting witnesses in this case and as

such the probate ought to have granted to the appellants in respect of the Will executed by the testator Late Chaya Bhattacharjee on 10.12.2022. Accordingly, the impugned judgment of the Court of learned District Judge, Cachar is hereby set aside and reversed.

15. It is hereby held that the Will dated 10.12.2022 executed by Late Chaya Bhattacharjee was her last Will and same has been duly executed, attested and proved. The learned District Judge, Cachar is directed to grant probate of the aforesaid Will, in favour of the present appellants, namely, Bibhuti Bhushan Goswami and Prasenjit Sharma under the seal of his Court in the form set forth in Schedule-VI. A Court certified copy of the Will shall also be annexed to the grant under the seal of the Court of the learned District Judge, Cachar. The grant of probate shall be made only on depositing the requisite stamp duty calculated on the net value of the estate bequeathed by the deceased. The appellants shall within six months of the grant of probate by the Court of learned District Judge, Cachar shall exhibit before the said Court, a full and true inventory of all property in possession, credits and debts of the deceased in terms of Section 317 of the Indian Succession Act, 1925.

16. This appeal is accordingly allowed.

17. Let the records of the Trial Court be sent back to the Trial Court along with a copy of this judgment and order.

JUDGE

Comparing Assistant