

**THE HIGH COURT OF TRIPURA
AGARTALA**

MFA NO.01 OF 2007

Sri Uttam Kumar Saha,
S/O Biraj Mohan Saha of
Village, P.O. & P.S. Melaghar,
District-West Tripura.

..... *Appellant*

- Vs -

1. Sri Dhirendra Kumar Saha,
S/O Late Biraj Mohan Saha.

..... *Petitioner-respondent*

2. Sri Pradip Kumar Saha,

3. Sri Dipak Kumar Saha,

4. Sri Susanta Kumar Saha,

5. Sri Jayanta Kumar Saha,

1 to 5-All sons of Late Biraj Mohan Saha of
Melaghar, P.S. Melaghar, District-West Tripura.

6. Smti. Laxmi Rani Saha,
W/O Late Biraj Mohan Saha of Melaghar,
P.O. Melaghar, District-West Tripura.

7. Smti. Kajal Rani Poddar(Saha),
W/O Bidhu Bhusan Poddar of
Giridhari Pally, P.O. & P.S. R.K. Pur,
South Tripura.

8. Smti. Putul Rani Saha,
W/O Late Dilip Kumar Saha,

9. Sri Dipankar Saha,

10. Sri Dibakar Saha,
Sons of Late Dilip Kumar Saha

11. Smti. Rupa Rani Saha,
D/O Late Dilip Kumar Saha,

8 to 11 are the residents of
Village, P.O. & P.S. Melaghar,
District-West Tripura.

12. Smti. Khela Rani Saha,
W/O Sri Kalyan Kumar Saha,
In-charge, Telegraph Office,
Udaipur, R.K. Pur, South Tripura.

13. Smti. Archana Rani Saha,
W/O Shri Uttam Kumar Saha of

Rajghat, P.S. Melaghar,
District-West Tripura.

..... *O.P. respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the appellant : Mr. S.M. Chakraborty, Sr. Advocate
Ms. D. Das, Advocate

For respondent No.1 : Mr. D.R. Choudhury, Advocate

For respondent No.2 to 13 : None

Date of hearing and
delivery of judgment
& order : **26.06.2015.**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal under Section 299 of the Indian Succession Act, 1925 read with Section 96 of the Code of Civil Procedure, 1908 is directed against judgment and order dated 15.03.2007 passed by learned Addl. District Judge(Court No.2), Agartala, West Tripura in case No.Misc.(Probate) 5 of 2003.

2. Heard learned senior counsel, Mr. S.M. Chakraborty for the appellant and learned counsel, Mr. D.R. Choudhury for respondent No.1. Other respondents did not participate in the hearing in spite of service of notice.

3. Respondent No.1 presented a petition under Section 276 of the Indian Succession Act, 1925 before the District Judge,

West Tripura, Agartala praying for granting him probate in respect of the Will executed by his father, Biraj Mohan Saha on 13.10.1995 in respect of land measuring 3 ganda 6 dhur with a temple and residential building along with trees and other huts thereon. Biraj Mohan Saha died on 09.07.2000. The petitioner, Dhirendra Kumar Saha is the beneficiary of the Will and is the propounder for granting probate. In his application for probate he *inter alia* contended that it was the last Will executed by his father for the property mentioned in the schedule of the petition valued about rupees one lakh. In the application for probate the petitioner arrayed his five brothers as opposite party Nos.1 to 5 which include the present appellant as opposite party No.3 and also arrayed his mother as opposite party No.6, sisters as opposite party Nos.7 and 8 and the legal representatives of his deceased brother, Dilip Kumar Saha as opposite party Nos.9 to 11 and also two others as the respondent/opposite parties.

4. Out of the thirteen respondent-opposite parties, the respondent-OP Nos.3, 8, 9, 10, 11 and 13 submitted a joint written objection and respondent-OP No.3, *i.e.* the appellant filed a further separate written objection *inter alia* contending that Biraj Mohan Saha executed another Will on 19.05.1997 and thereby bequeathed his property by that Will which was the last Will and a probate case bearing case No.Misc.(Probate).4 of 2003 was pending in the Court. The opposite parties further contended that no such will was executed by Biraj Mohan Saha on 13.10.1995 bequeathing the

property in favour of the petitioner and hence the petitioner was not entitled to certificate of probate.

5. In course of hearing, the petitioner examined himself as PW1 and also examined his mother Laxmi Rani Saha, OP No.6 as PW2 and the Deed Writer, *i.e.* the scribe of the Will, Sukha Ranjan Roy as PW3 and one of the attesting witness, Mohan Lal Saha as PW4. It was a Will executed and registered in the office of the Sub-Registrar at Agartala. The Will has been proved as *Exbt.1*. The signature of the testator as well as the signature of the attesting witnesses have been proved.

6. On perusal of the evidence of witnesses I find that the trial Court in the examination-in-chief of PW Sukha Ranjan Roy recorded him as PW3 but in cross-examination recorded as PW4 and in respect of Mohan Lal Saha, in the examination-in-chief recorded as PW4 but in cross-examination recorded as PW3. However, the signatures of the witnesses properly obtained. There were two attesting witnesses in the Will, one was Mohan Lal Saha who has proved his signature and the other witness, Birendra Chandra Roy died and his signature has been proved by PW3, Sukha Ranjan Roy.

7. OP No.3 *i.e.* the appellant Uttam Kumar Saha examined himself as DW1 and he proved a firsti of documents dated 27.5.2006 which is marked as *Exbt.A*. The copies of the documents

enclosed with the firisti have not been proved or marked as exhibits.

8. The trial Court considering the pleadings and the evidence by impugned order dated 15.03.2007 granted letter of administration in favour of the petitioner in respect of the property mentioned in the Will and in the schedule of the petition.

9. Learned senior counsel, Mr. Chakraborty appearing for the petitioner has submitted that it is the requirement of Section 276(1)(b) of the Indian Succession Act that the Will must be the last Will and testament for granting probate or even for granting of letter of administration but there is ample evidence on record that the testator, Biraj Mohan Saha executed another Will on 19.05.1997 and for that Will also a probate petition is pending and so the trial Court would dismiss the probate petition filed by the petitioner. He has also contended that PW2, Laxmi Rani Saha though in her examination-in-chief stated that she accompanied her husband at the time of execution of the Will but in cross-examination she clearly admitted that she was not present at the time when the Will was executed and she did not know when the Will was executed. Under such circumstances, the Will has to be considered as suspicious and no probate or letter of administration should have been granted in favour of the petitioner.

10. Learned counsel, Mr. Choudhury on the other hand has submitted that it is a registered Will duly executed and registered with the office of the Sub-Registrar and it has got a presumptive value of genuineness. Further, submits learned counsel, Mr. Choudhury that the execution of the Will has been proved by the scribe of the Will, *i.e.* PW3, Sukha Ranjan Roy and the attesting witness, *i.e.* PW4, Mohan Lal Saha. So, even if the evidence of PW2, Laxmi Rani Saha is discarded, there is no reason to disbelieve the execution of the Will by the testator.

11. A Will is a testamentary instrument bequeathing property of the testator and if execution of the Will is proved the intention of the testator who is no longer on the earth has to be respected. The Will must be signed by the testator and attested by at least two witnesses and in the present case the testator, Biraj Mohan Saha executed the Will in the presence of two attesting witnesses and the scribe of the Will. The Will was registered in due process. Two attesting witnesses attested the Will out of whom one has died and the other witness, Mohan Lal Saha has been examined and he has proved his signature in the Will. Both attesting witnesses, *i.e.* Mohan Lal Saha and the scribe of the Will, Sukha Ranjan Roy stated that Biraj Mohan Saha executed the Will and put signature in their presence. There is nothing that Biraj Mohan Saha was not in a disposing mind and/or was having with any mental or physical incapacity. Since the execution of the Will has been

proved, it has to be regarded as a document of sanctity for the purpose of disposal of the property under the document.

12. I have meticulously gone through the contents of the Will. The testator disclosed his mind very clearly that he has disposed his property in favour of all his sons and that the property under the present Will was his temple and residential building with other huts and trees etc. and he bequeathed it in favour of the petitioner specifically mentioning therein that the petitioner was helping him in performing the religious performance and was looking after him and, therefore, the temple and house building have been disposed by the testator in favour of the petitioner.

13. The question raised by learned senior counsel, Mr. Chakraborty that it is a previous Will and since it is not the last Will of the testator, no probate or letter of administration can be granted. The petitioner is the beneficiary of the Will. The contents of the Will disclosed that there was no executor appointed by the testator in the Will. So, the beneficiary *i.e.* the petitioner propounded the Will for probate. The trial Court rightly held that since there was no executor mentioned in the Will a petition for probate cannot be allowed and hence though the petition was made for grant of probate he was ultimately allowed letter of administration. That finding of the Court below has not been challenged. The OP-appellant only raised the issue that the testator, Biraj Mohan Saha executed another Will on 19.05.1997 and for that

Will a probate petition No.4 of 2003 was pending. For maintaining a petition for probate a petitioner has to prove that the Will was the last Will of the testator. But for a letter of administration, as prescribed under Section 278 of the Indian Succession Act, no such averment is to be made and also required to be proved.

14. Learned senior counsel, Mr. Chakraborty raised a valid point that for granting probate a Will must be the last Will of the deceased. In the trial Court's order, it is clearly mentioned that a petition was made for amendment of the petition to convert it as a petition under Section 278 of the Indian Succession Act, but though that amendment was not ultimately entertained, the trial Court granted letter of administration and not probate to the Will. For granting letter of administration it is not an essential requirement that the Will attached must be the last Will of the deceased. So, in the given facts of this case, I find no force in the argument of learned senior counsel, Mr. Chakraborty to hold that the petition was not maintainable since it was not the last Will of the testator, Biraj Mohan Saha. The petitioner also admitted that there was a Will executed by Biraj Mohan Saha on 19.05.1997 which means that Will was the last Will of the deceased.

15. Learned counsel, Mr. Chowdhury argued that the property disposed under the present Will and the property disposed under the earlier Will was different and so the Will cannot be questioned. In a case of probate it is the specific terms of Section

276 of the Indian Succession Act that the Will annexed must be the last Will of the testator but for granting letter of administration it is not so required. Since in the present case letter of administration has been granted in favour of the petitioner, I find nothing wrong committed by the trial Court in the process though it is proved that the present Will for which letter of administration has been granted was not the last Will of the deceased.

16. In view of the discussions made above, I find no merit in the appeal and the appeal therefore stands dismissed.

17. Send back the L.C. records along with the copy of this judgment.

JUDGE