

Item-4 18-02-2022

sg Ct. 8

FA 58 of 2018

Animesh Chakraborty
Versus
Mamata Chakraborty & Anr.

(Through Video Conference)

Mr. Anirban Banerjee, Adv.
...for the appellant

Ms. Shreshtha Gupta, Adv.
...for the respondents

We have heard the learned Counsel for the parties.

The appeal is arising out of a judgment and decree dated 11th December, 2017 passed by the learned Civil Judge (Senior Division) and District Delegate at Serempore, Hooghly with regard to the grant of probate in favour of the appellant.

The appellant is the nephew of the deceased propounder. It appears that the propounder suffered 30% burn injury and she was hospitalized on 13th October, 2016 at 11:30 AM and discharged on 25th October, 2016. The alleged Will was claimed to have been executed on 17th October, 2016. The propounder died within seven and half-hours of her discharge from the Nursing Home on 25th October, 2016. Although, the mother and the sister of the executor had filed affidavit on consent, but the learned Judge refused to grant probate on the ground that the executor had failed to remove the suspicious circumstances surrounding the execution of the said Will.

While we agree with the learned Trial Judge that the executor had failed to remove the suspicious circumstances surrounding execution of the said Will as the Will was not

proved in course of the provision of the Act – doctor was not examined and the circumstances under which the Will was executed also not being properly explained as admittedly the propounder had suffered 30% burn injury and may not be in the proper frame of mind to execute the said Will. However, one thing which might have missed the attention of the learned Trial Court was that the persons who would have ordinarily succeeded to the said estate but for execution of the Will were not mentioned in the petition and the statement appearing at paragraph 6 is completely misleading. The heirs of the husband who would have ordinarily succeeded to the said estate of the propounder were confidently left out in the petition and no citation was issued to them.

On such consideration, we uphold the order of the learned Trial Judge and give our additional reasons to sustain the said order.

The appeal stands dismissed.

Urgent photostat certified copy of this order, if applied for be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)