

OD-5

ORDER SHEET

TS/13/2013

IA NO: GA/3/2021

IN THE HIGH COURT AT CALCUTTA
Testamentary & Intestate Jurisdiction
ORIGINAL SIDE

IN THE GOODS OF :
NITYA GOPAL NANDY (DEC)

BEFORE:

The Hon'ble JUSTICE RABINDRANATH SAMANTA

Date : 14th July, 2022

Appearance:

Mr. Shyamal Chakraborty, Adv.

Mr. Jayanta Kumar Dhar, Adv.

...for the plaintiff

The Court: The suit is taken up for hearing argument as undefended suit.

I have heard learned Counsel appearing for the plaintiff.

Initially, the application made by the applicant Kanchan Nandy, seeking grant of probate of the last Will and testament of Nitya Gopal Nandy was registered as PLA 167 of 2008.

Smt. Kajal Set, a daughter of the testator, after getting notice of the probate application, appeared before the Court to contest the application. After the probate application became contentious, the application was registered as the instant testamentary suit.

But, she stopped contesting the suit and thereafter, the suit was posted for hearing as undefended suit.

To put succinctly, the case of the plaintiff may be stated as under:-

Nitya Gopal Nandy, during his lifetime, ordinarily resided at Village Khoragore, P.O. Krishnarampur, Dist. Hooghly, West Bengal. He was governed by Dayabhaga School of Hindu Law.

During his lifetime, Nitya Gopal Nandy executed his last Will and testament dated 11th May, 2005. In the Will, he appointed his son Kanchan Nandy as the executor of the Will. By the Will, the testator bequeathed the properties as described in the affidavit of properties in the manner as stated in the Will.

The testator, Nitya Gopal Nandy died on 1st April, 2007 leaving behind him his son Kanchan Nandy, widow Sibani Nandy and two daughters, namely, Kajal Set and Smt. Kaberi Pramanick and they are his legal heirs.

The petitioner states that no other application for grant of probate or Letters of Administration in respect of the last Will and testament of the testator is pending in this Hon'ble Court or any other court. As such, there is no impediment to grant probate of the Will in favour of the plaintiff. Hence, the suit arose.

In order to prove his case, the plaintiff Kanchan Nandy has got himself examined as P.W.1. He has examined Balaram Mukherjee (P.W2.) and Amal Kumar Nandy (P.W.3). The documents including the last Will and testament of

the testator upon which the plaintiff places reliance have been marked as Exhibits A to D.

P.W.1, Kanchan Nandy in his evidence has testified that his father executed the last Will and testament on 11th May, 2005 and he has been appointed as the executor of the Will to obtain probate of the Will.

The original Will of the testator has been marked as Exhibit C.

It is evident from the Will that the testator executed the Will on 11th May, 2005 in presence of attesting witnesses, namely, Balaram Mukherjee and Amal Kumar Nandy. Balaram Mukherjee, who was the scribe as well as the attesting witness, has been examined as P.W.2. The another attesting witness, namely, Amal Kumar Nandy has been examined as P.W.3.

It appears from the evidence of P.W.1 Balaram Mukherjee that he scribed the Will as per the instructions of the testator, Nitya Gopal Nandy. He deposes that Nitya Gopal Nandy executed the Will in his presence by putting his signature and at the time of execution of the Will he was physically fit and mentally alert. The another attesting witness, namely, Amal Kumar Nandy (P.W.3) has also deposed that the testator, Nitya Gopal Nandy executed the Will in his presence by putting his signature and at the time of execution of the Will, he was physically fit and mentally alert.

From the evidence of P.W.2, Balaram Mukherjee and P.W.3, Amal Kumar Nandy, it is evident that the testator duly executed the Will in accordance with law.

It appears that the Will executed by the testator was duly registered.

The death certificate (Exhibit B) shows that the testator, Nitya Gopal Nandy died on 1st April, 2007. The evidence on record shows that the plaintiff has proved his case.

I do not find any reason to disbelieve the oral evidence of the aforesaid witnesses and the documents led in evidence without any challenge.

In the result, the suit merits success.

Accordingly, it is ordered that the suit be decreed ex parte against the defendant, Smt. Kajal Set but without cost.

The plaintiff do get decree of probate of the last Will and testament dated 11th May, 2005 executed by the testator, Nitya Gopal Nandy.

The original Will filed in Court be preserved in accordance with law.

Draw up the decree expeditiously.

(RABINDRANATH SAMANTA, J.)