

IN THE HIGH COURT AT CALCUTTA
(Testamentary and Intestate Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

TS 4 of 2018

In The Goods Of: Sephali Bose (Dec.)

-And-

Joydeep Guha

Versus

Gautam Bose

Mr. Chayan Gupta

Mr. Pourush Bandyapadhyay

Mr. Avijit Dey

.....For the Plaintiff

Heard on : 26.09.2022

Judgment on : 03.11.2022

Krishna Rao, J.:

The plaintiff has filed the instant application for grant of Letters of Administration of the last Will and testament of the deceased Sephali Bose dated 07.12.2006 and Codicil dated 18.07.2008. Initially, the said Will and Codicil was propounded by Joydeep Guha being PLA No. 188 of 2015 in which Gautam Bose the son of the testatrix had lodged his caveat and filed affidavit in support of his caveat. On receipt of the caveat and affidavit the PLA No. 188 of 2015 is converted as Testamentary Suit No. 4 of 2018.

As Joydeep Guha did not take any steps to pursue for grant of probate, Taniya Guha a beneficiary of the said Will and Codicil, had filed an application being GA No. 5 of 2015 for transposing herself as plaintiff in the instant suit and accordingly the same was allowed by this Court.

As per the case of the plaintiff, the deceased Sephali Bose was the owner of both movable properties and immovable properties. On 07.12.2006, the said Sephali Bose had executed a Will which was duly registered before the Additional District Sub-Registrar, Alipore and subsequently on 18.07.2008, the said Sephali Bose had also executed a Codicil which was also registered before the Additional District Sub-Registrar, Alipore.

As per the case of the plaintiff by virtue of the said Will and testament, the proforma defendant namely Joydeep Guha was appointed as executor of the said Will and testament and the Codicil. In the said Will and Testament, there are two attesting witnesses namely Gita Guha (Now deceased) and Surajit Choudhury. One attesting witness, namely Gita Guha died on 13.03.2013. The said Sephali Bose executed the Codicil in presence of three witness namely Amitabha Sarkar, Surajit Choudhury and Sreemati Sarkar on 18.07.2008.

Sephali Bose died on 26.12.2014 leaving behind Gautam Bose (Son/caveator), Taniya Guha granddaughter (plaintiff herein) and Joydeep Guha grandson (erstwhile executor of the Will). The husband of Sephali Bose namely R.N. Bose was the pre-deceased of his wife.

Rabindranath Bose, pre-deceased husband of Sephali Bose, Gita Guha now deceased wife of Late Asis Kumar Guha and pre-deceased daughter of Sephali Bose were died intestate on 13.01.2000 and 13.03.2013 respectively leaving behind Gautam Bose as her son, Joydeep Guha as her grandson of the pre-deceased daughter and Taniya Guha as her granddaughter of pre-deceased daughter.

During the evidence, the plaintiff had adduced three witnesses namely Surajit Choudhury, Amitabha Sarkar and Taniya Guha (plaintiff herself). The first witness namely Surajit Choudhury is one of the attesting witness of the Will and Codicil and the second witness namely Amitabha Sarkar is the attesting witness to the Codicil dt. 18.07.2008. The witness no. 3 is the plaintiff who is the beneficiary of the said Will and Codicil.

The first two witnesses namely Surajit Choudhury and Amitabha Sarkar were cross-examined by the defendant but subsequently the defendant stop contesting the present suit. The witness no. 2, namely Amitabha Sarkar was examined before this Court and cross-examined in part and subsequently the witness no. 2 was cross-examined through Commission. The Learned Advocate Commissioner had submitted report before this Court on 18.07.2022 by circulating the report to the Learned Counsel for the contesting parties but on 18.07.2022 none appeared on behalf of the defendant and this Court has directed the counsel for the plaintiff to inform the next date of hearing to the Learned Counsel for the defendant and accordingly the case was fixed on 03.08.2022 for examination of witness no. 3 on behalf of the plaintiff. On 03.08.2022, the Learned

Counsel for the defendant had appeared and submits that he is not getting any instructions from the defendant and prays leave to retire from the instant case and accordingly the Learned Advocate appearing on behalf of the defendant had retired from the instant case. On 03.08.2022, the witness no. 3 was examined and the plaintiff has closed his evidence and accordingly this Court has fixed the matter on 02.09.2022. Vide order dt. 03.08.2022, this Court has directed the Counsel for the plaintiff to inform the next date of hearing to the defendant and to file affidavit of service and accordingly the Counsel for the plaintiff had informed the next date to the defendant but inspite receipt of the notice, none appeared on behalf of the defendant on 02.09.2022 accordingly, on the basis of the affidavit of service filed by the plaintiff, the evidence on behalf of the defendant was closed and fixed for argument.

P.W.1, Surajit Choudhury who is one of the attesting witness of the Will and the Codicil has categorically stated that “in course of my usual visits at Mrs. Sephali Bose’s house she mentioned to me that she desire to make a fresh Will in favour of her granddaughter Taniya Guha in supersession of earlier will and Codicil thereof. He further stated that she mentioned to him that he should be one of the witnesses to this Will. On appointed date and time, he came to their house and having entered the room, he found all others were sitting in the said room, he met with all others, Mrs. Sephali Bose then her daughter Late Gita Guha and her two grand children Joydeep Guha and Taniya Guha and the learned lawyers were also present. He also stated that Sephali Bose went through the Will

which was written in English and at that time she turn on pages and went back to pages to reads once more. After having read all the pages, she signed each pages of the Will. He also stated that after signing of Mrs. Bose in the Will, Mrs. Gita Guha read this Will and signed the Will then he has read and signed the Will. The witness Surajit Choudhury has identified the signature of Mrs. Sephali Bose in the said Will which was encircled in the red colour. He has also identified his signature in the said Will which was encircled in the blue colour. He further stated that she was very much mentally alert as she used to have chat with him regarding the Will. He further stated that he could see that she was in very much normal mental health and there was no doubt whatsoever with regard to her health. The Will has exhibited as Exhibit – “A” and signature of Sephali Bose was marked as Exhibit- “A1” and his signature was marked as Exhibit – “A2”.

He further stated that in the year 2008 in course of his usual visit to their house, she mentioned to him that she wanted to make certain modification in the Will and accordingly on the appointed date, he went to her house and he also found people sitting around including Mrs. Sephali Bose. He further stated that Mrs. Sephali Bose went through the Codicil which were written in English and then she signed on each of the pages of the Codicil, thereafter Amitabha Sarkar had also signed in the said Codicil and he had also signed as witness and thereafter Sreemati Sarkar has also signed in the said Codicil as witness. He further stated that thereafter the Registrar Officials have taken the said document to complete the formalities. The Codicil was marked as Exhibit – “B” and signature of Mrs. Sephali Bose

was exhibit as Exhibit – “B-1” and signature of the witness was exhibited as Exhibit “B-2”. He further stated that Sephali Bose was mentally and physically fit at the time of execution of the Codicil. The said witness was cross-examined but during the cross-examination nothing adverse was brought on record to create any suspicious circumstances for execution of the Will and the Codicil. The witness no. 2, Mr. Amitabha Sarkar who is the witness of the Codicil has stated that Mrs. Sephali Bose informed him that she made a Will on 07.12.2006 and now she is going to make a Codicil to the said Will and at that time she informed him that she imposed all her properties to her granddaughter Taniya Guha and she requested him to be the witness of the Codicil. He further stated that as per her request on 18.07.2008, he along with his wife went to the house of Mrs. Sephali Bose and found that Mrs. Sephali Bose was sitting along with her lawyer and he also seen the peoples from the Registrar Office and Mr. Surajit Choudhury. He has also stated that Mrs. Sephali Bose wrote the Codicil in English and she signed the Codicil and he has signed as witness and then Mr. Choudhury and his wife have signed as witness in the said Codicil. He has also stated that Mrs. Sephali Bose was physically and mentally fit at the time of execution of the Codicil. He was cross-examined at length but nothing was brought on record to create any suspicious for execution of the Codicil.

Witness no. 3, Taniya Guha who is the plaintiff and the beneficiary of the said Will and Codicil was examined as witness no. 3 and during her examination-in-chief, she has categorically stated that her grandmother and

grandfather were residing in Delhi and his uncle Gautam Bose along with his family members were also resided with them but the behavior of the uncle and aunt towards her grandfather and grandmother was very bad. She has further stated that due to the bad behavior of her uncle and her aunt towards her grandfather and grandmother, her grandfather and grandmother have decided to relocate in Kolkata at her residence. He has further stated that there was strained relationship between her uncle Gautam Bose and her grandparents. During her examination, certain documents were exhibited as Exhibit – “C” to Exhibit – “J” which are the correspondence exchange between Sephali Bose and the defendant which clearly shows that Sephali Bose was possessing good mental health and was also fully conversant and capable of communicating in English.

The defendant by filing the affidavit and by cross examine the witness nos. 1 and 2 has taken the plea that the testatrix was illiterate and did not understand English and her mental and physical condition was not good but during the cross-examination of the witnesses no.1 and 2 nothing was brought on record to prove his defense. The defendant has also not produced any witness to support of the plea taken in the affidavit and during the cross-examination of the witness no. 1 and 2. The defendant has not come forward to examine himself or any person as his witness in support of his plea.

After going through the pleadings, the evidence of the witness particularly, the witness nos. 1 and 2, this court finds that the plaintiff has able to prove that the testatrix had executed the Will and the Codicil while

possessing good physical and mental health in presence of the witnesses and the same was duly registered before the Sub-Registrar.

In view of the above, Letters of Administration is granted in favour of the plaintiff in terms of the Will dt. 07.12.2006 and the Codicil dt. 18.07.2008 subject to furnishing bond of Rs. 5,00,000/- with two sureties.

TS 4 of 2018 is thus **disposed of**.

(Krishna Rao, J.)