

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

TS 15 of 2018

In the Goods Of:

Sankari Prasad Chatterjee, Deceased

-And-

Prasanta Chatterjee

-VS-

Krishna Majumdar & Anr.

Mr. Rajarshi Dutta

Mr. Sayantan Bose

Ms. Madhurima Das

.....For the Plaintiff

Heard on : 10.11.2022

Judgment on : 22.11.2022

Krishna Rao, J.:

The petitioner being the executor has filed the instant suit for grant of probate with respect of the last Will and Testament of the deceased Sankari Prasad Chatterjee dt. 5th April, 2012.

The deceased Sankari Prasad Chatterjee left behind his wife, two sons and two daughters namely :

- | | |
|------------------------------------|---------------------------------|
| 1. <i>Smt. Malati Chatterjee</i> | <i>... Wife (Now Deceased)</i> |
| 2. <i>Shri Prasanta Chatterjee</i> | <i>... Son (Petitioner)</i> |
| 3. <i>Shri Susanta Chatterjee</i> | <i>... Son</i> |
| 4. <i>Smt. Krishna Majumdar</i> | <i>... Daughter</i> |
| 5. <i>Smt. Sukla Roy</i> | <i>... Daughter.</i> |

The wife of the deceased namely, Smt. Malati Chatterjee died on 19th April, 2016.

On receipt of special citation, the daughter namely Smt. Krishna Majumdar and Smt. Sukla Roy have lodged their caveat along with an affidavit accordingly the probate proceeding was converted to a Testamentary Suit. During the pendency of the instant suit, the daughters have filed their affidavit of consent by stating that they are not willing to oppose for grant of probate with respect of the last WILL and Testament in favour of the petitioner accordingly vide order dt. 10th December, 2020 the caveators have been discharged from the instant suit and the plaintiff was given liberty to obtain probate upon proving the WILL.

On the prayer of the plaintiff, an Advocate Commissioner was appointed to examine the witnesses of the plaintiff on commission. The plaintiff has examined two witnesses on commission namely:

1. *Shri Susanta Chatterjee – Brother of executor as well as Attesting witness of the Will.*
2. *Shri Prasanta Chatterjee – Plaintiff, Executor of the Will.*

During the examination of the said witnesses, two documents were exhibited namely:

- i. *Exhibit - A ... Original Will dt. 5th April, 2012.*
- ii. *Exhibit - B ... Original Death Certificate of Sankari Prasad Chatterjee.*

The Witness namely, Susanta Chatterjee is one of the son the deceased Sankari Parasad Chatterjee and is also the attesting witness of the Will dt. 5th April, 2012. During his evidence, the Original Will was tendered before him and he has identified the said Will. He has also identified the signature of his father in the Will as well as his signature and the other attesting witnesses. In his evidence, he has categorically deposed that his father has executed the Will in his presence and in presence of the witnesses at the residence. The witness also stated that at the time of execution of the Will father was mentally alert and physically active. He has also confirm that he has filed an affidavit of consent for grant of probate in favour of the executor of the Will.

The plaintiff who is the executor of the will is examined as witness in the instant case and he has supported his case made out in the probate application and had also filed the death certificate of his father to prove that his father expired on 23rd April, 2013. He has also proved that his mother died on 19th April, 2016.

After going through the evidence of the witnesses and the documents exhibited during their evidence, the plaintiff has able to prove that during

the life time the father namely Sankari Prasad Chatterjee had executed a Will in favour of the plaintiff in presence of the witnesses while possessing good health. Though the daughters of the deceased have initial filed their caveat and affidavits but subsequently on their prayer they have been discharged and there is no challenge to the suspicion of the Will.

In view of the above, the plaintiff Shri Prasanta Chaterjee has proved the last Will and Testament of the deceased for grant of probate in favour of the plaintiff.

The suit is accordingly decreed in terms of prayer (a) of the application for grant of probate of the Will. The probate of the Will dt. 5th April, 2012 executed by the testatrix Sankari Prasad Chatterjee is granted to the plaintiff, Shri Prasanta Chatterjee on payment of requisite Stamp Duty. Copy of the Will be annexed to the Probate.

TS 15 of 2018 is disposed of. Decree be drawn accordingly.

(Krishna Rao, J.)