

18.01.2023
SL No.127
Court No.8
(gc)

FA 316 of 2008
CAN 3 of 2014 (Old No: CAN 4234 of 2014)
CAN 4 of 2015 (Old No: CAN 8261 of 2015)

Sri Chandan Kumar Dey
Vs.
Smt. Sefali Ghosh

Mr. Ashis Kumar Dutta,
...for the Appellant.
Mr. Tapash Kr. Bhattacharya,
Mr. Aviroop Bhattacharya,
...for the Respondent.

The appellant is unable to argue the matter.

We have heard the learned Counsel for the respondent.

The Trial Court has refused to grant probate as the propounder was unable to remove the suspicious circumstances surrounding execution of the Will. It is evident from the evidence that the testatrix was illiterate. Moreover, the exclusion of Sefali Ghosh, one of the widow daughters of deceased Basanti Bala Dey residing with her since 1969 is a relevant consideration in deciding the matter. She was deprived of the benefit of the property. It was evident from the evidence that Chandan Kumar Dey was instrumental in preparation of the Will and all the attesting witnesses are his friends and relatives. The propounder has failed to prove that the testatrix carried with her an independent mind and with due knowledge of the contents of the Will executed the said Will. In fact,

there is no evidence on record to show that the Will was read over and explained to Basanti Bala Dey. The burden of proof is always upon the propounder to remove all the suspicious circumstances and to demonstrate that the Will is the result of a free and informed mind.

On such consideration, we do not find any reason to interfere with the order passed by the learned Trial Court.

Accordingly, the appeal and the applications stand dismissed.

However, there shall be no order as to costs.

L.C.R may be sent down to the Trial Court along with original copy of the Will.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)