

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

TS 44 of 2016

IA No. GA/6/2017 (Old No: GA 7 of 2017)

In the Goods Of:

Kshitish Chandra Chowdhury, Deceased

-And-

Pinaki Chowdhury

-Versus-

Subrata Chowdhury & Japani Roy

Mr. Aniruddha Mitra

Mr. Emon Bhattacharyya

Mr. Dhilon Sengupta

Ms. Pooja Sah

.....For the petitioner.

Hearing Concluded On : 13.10.2023

Judgment on : 18.10.2023

Krishna Rao, J.:

1. The petitioner has filed the instant application for grant of Letters of Administration of the last Will and Testament of deceased Kshitish Chandra Chowdhury dated 22nd August, 1969.

2. The deceased Kshitish Chandra Chowdhury, has executed his last Will and Testament in Bengali Language on 22nd August, 1969 and pursuant to the said last Will and Testament, his wife namely Saroshibala Chowdhury was the sole beneficiary.
3. The deceased Kshitish Chandra Chowdhury died on 24th April, 1970 leaving following persons as his legal heirs :

SL. No.	Name	Address	Relationship
1.	<i>Saroshibala Chowdhury</i>	<i>190, Maharshi Debendra Road, Calcutta – 700006.</i>	<i>Wife</i>
2.	<i>Debabrata Chowdhury</i>	<i>190, Maharshi Debendra Road, Calcutta – 700006.</i>	<i>Eldest Son</i>
3.	<i>Satyabrata Chowdhury</i>	<i>190, Maharshi Debendra Road, Calcutta – 700006.</i>	<i>Second Son</i>
4.	<i>Priyabrata Chowdhury</i>	<i>190, Maharshi Debendra Road, Calcutta – 700006.</i>	<i>Youngest Son</i>

4. The deceased Saroshibala Chowdhury had not applied for grant of Letter of Administration of the last Will and Testament of her husband, namely Kshitish Chandra Chowdhury, dated 22nd August, 1969 during her lifetime.
5. During the lifetime of deceased Saroshibala Chowdhury, her eldest son Debabrata Chowdhury died on 22nd August, 1992.

6. The deceased Saroshibala Chowdhury died on 24th April, 1995, leaving behind her last will and testament dated 4th Magh, 1399 in the Bengali Era corresponding to 18th January, 1993, by appointing Shri Pinaki Chowdhury as sole beneficiary of her last Will and Testament.
7. Deceased Saroshibala Chowdhury left behind the following legal heirs :

SL. No.	Name	Address	Relationship
a)	Gita Chowdhury	36, Hem Chandra Naskar Road, Flat No. – 1, 1 st Floor, Calcutta – 700010.	Daughter-in-law (wife of predeceased son, died on January, 2007)
b)	Subrata Chowdhury	36, Hem Chandra Naskar Road, Flat No. – 1, 1 st Floor, Calcutta – 700010.	Grand Son (son of predeceased son)
c)	Japani alias Chandra Roy	140A, Raja Dinendra Street, Calcutta – 700004.	Married grand-daughter, (daughter of predeceased son)
d)	Satyabrata Chowdhury	190, Maharshi Debendra Road, Calcutta – 700006.	Son (bachelor son, died on 12.07.2008)
e)	Priyabrata Chowdhury	190, Maharshi Debendra Road, Calcutta – 700006.	Son (died on 21.07.2008)
f)	Niva Chowdhury	190, Maharshi Debendra Road, Calcutta – 700006.	Daughter-in-law
g)	Susmita Bose	226, Canal Street, Sreebhumi, Calcutta – 700048.	Married grand-daughter

<i>h)</i>	<i>Pinaki Chowdhury</i>	<i>190, Maharshi Debendra Road, Calcutta – 700006.</i>	<i>Grand Son</i>
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8. After the death of Saroshibala Chowdhury, the petitioner being the grandson of deceased Kshitish Chandra Chowdhury and Saroshibala Chowdhury, has filed the present application for grant of Letters of Administration.
9. On 12th November, 2008, a Caveat has been filed by Subrata Chowdhury son of late Debabrata Chowdhury and another Caveat has been filed on 16th June, 2016, by Japani alias Chandra Roy, daughter of late Debabrata Chowdhury and wife of late Braja Kishore Roy.
10. On receipt of caveat and affidavit-in-support of caveat, this Court had marked the suit as contentious cause and numbered as T.S. No 44 of 2016.
11. On 15th December, 2016, this Court on the basis of the submissions and pleadings of the parties had framed issues.
12. Though the defendants have filed an affidavit-in-support of their caveat and this Court has treated the suit as contentious cause but subsequently the defendants/caveators failed to appear before this court. The Counsel for the plaintiff had repeatedly informed and sent notices to the defendants/caveators, but even after receipt of the same none appeared on behalf of the defendants/caveators.

- 13.** In support of the case, the petitioner had examined two witnesses namely Arya Kumar Chowdhury, who is one of the attesting witness of the Will and Testament and the petitioner himself. As per the evidence of Arya Kumar Chowdhury, he is the son of late Naresh Chandra Chowdhury, who is the brother of the late Kshitish Chandra Chowdhury. He further states that at the time of execution of the will by deceased Kshitish Chandra Chowdhury, he was present all along with the youngest son of the deceased namely, Priyabrata Chowdhury, who was also another attesting witness of the Will. He also stated that at the time of execution of the Will and Testament, the testator was suffering from various ailments, but the testator was mentally fit. He has identified the signatures of the testator, his signature as well as the signatures of the attesting witnesses. He has also identified the another Will and Testament executed by the testatrix, namely, Saroshibala Chowdhury, wife of deceased Kshitish Chandra Chowdhury. In the said Will and Testament also he is one of the attesting witnesses along with one Bidyut Chatterjee. He further stated that at the time of execution of the Will and Testament of the testatrix, deceased Saroshibala Chowdhury was physically and mentally fit.
- 14.** During the evidence of Arya Kumar Chowdhury, he has identified the Will dated 22nd August, 1969 of his uncle, (father's Brother) the deceased Kshitish Chandra Chowdhury, and the same was Exhibited as 'Exhibit-A/4', signature of the Testator was exhibited and marked as 'Exhibit-A/1', signature of Arya Kumar Chowdhury is marked as

'Exhibit-A/2' and signature of another witness is also exhibited and marked as 'Exhibit-A/3' collectively.

- 15.** PW-2 during his examination has also identified the will of his aunt (wife of his father's brother), deceased Saroshibala Chowdhury, dated 4th Magh, 1399 in the Bengali Era corresponding to 18th January, 1993, and the same was exhibited and marked as 'Exhibit-B/1', signature of the testatrix was also exhibited and identified by PW-2 and is marked as 'Exhibit-B', subsequently signatures of Arya Kumar Chowdhury is exhibited and marked as 'Exhibit-B/2' and signature of another witness, namely, Bidyut Chatterjee, was exhibited and identified by PW-2 and is marked as 'Exhibit-B/3'.
- 16.** Considered the submissions made by the Counsel for the plaintiff, perused original Will, death certificates and the statements of the witnesses. This Court finds that the testator Kshitish Chandra Chowdhury had executed his last Will and Testament on 22nd August, 1969, by nominating his wife late Saroshibala Chowdhury as his sole beneficiary.
- 17.** The Testator had executed his last will and testament in the presence of two witnesses namely Priyabrata Chowdhury and Arya Kumar Chowdhury. The plaintiff had examined Arya Kumar Chowdhury, who is one of the attesting witnesses of the last Will and Testament. The attesting witness, Arya Kumar Chowdhury has categorically stated in his evidence that he was present at the time of execution of the last Will

and Testament of Late Kshitish Chandra Chowdhury. The attesting witness also stated that the testator while executing the Will was mentally sound. He has further stated that the other witness had signed the said Will in his presence and he has identified the Will and signature of the testator as well as the signature of another attesting witness.

18. This Court finds that the petitioner has proved the last Will and Testament dated 22nd August, 1969 of the deceased Kshitish Chandra Chowdhury and there are no circumstances to suspect the execution of the said Will.
19. The Will and Testament is of dated 22nd August, 1969 but the petitioner has filed the case in the year of 2009 but during his evidence as P.W.1, the petitioner has explained in question No. 31 that the problem started after the death of his father in the year' 2008 and he had sought for legal advice and as per legal advice, the petitioner had filed the present case.
20. In view of the above, the petitioner is entitled to get Letter of Administration of the last Will and Testament dated 22nd August, 1969 in terms of prayer (c) of the suit, subject to furnishing Bond of Rs. 1,00,000/- with one surety.
21. **T.S. No. 44 of 2016** is thus **disposed of**.

(Krishna Rao, J).