

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

TS 16 of 2013

In the Goods Of:

Arati Nandy, Deceased

Mr. Sankarsan Sarkar

Mr. Ashim Kumar Chatterjee

Mr. Saumyajit Ghoshal

.....For the applicant.

Heard on : 03.05.2023

Judgment on : 21.06.2023

Krishna Rao, J.:

1. The plaintiff, Arindam Nandy had initially filed an application being PLA No. 98 of 2012 for grant of probate of the last Will and Testament of the deceased Arati Nandy, dated 20th October, 1987. The daughter of the deceased namely Smt. Aditi Guha had filed her caveat as well as affidavit in support of her caveat. On receipt of caveat and affidavit in support of caveat, this Court had marked the said suit as contentious cause and numbered as T.S. No. 16 of 2013. Though the defendant had filed an affidavit in support of her caveat and this Court has treated the suit as

contentious cause but subsequently the defendant failed to appear before this Court. The plaintiff had also served a notice upon the defendant informing the date of hearing but in spite of receipt of the notice, the defendant had not appeared before this Court and accordingly on 16th February, 2023, this Court had framed issues.

2. In support of the case, the plaintiff had examined two witnesses namely Jayanta Singha Roy, who is the attending witness of the Will and the plaintiff himself. As per the evidence of Jayanta Singha Roy, he is the son of one of the attesting witness namely Narayan Chandra Singha Roy who has passed away. He further submits that at the time of execution of the Will by the testatrix he was present along with his father and in his presence, the testatrix had executed the Will and his father and another witness namely Prasanta Kumar Mitra have signed in the said Will as attesting witnesses. He further stated that at the time of execution of the Will, the testatrix was physically and mentally fit. He has identified the signature of testatrix as well as the signature of attesting witnesses. He has also identified the Will executed by the testatrix. During his evidence the Will dated 20th October, 1987 was exhibited as Exhibit A, signatures of the testatrix was exhibited as Exhibit A/1 collectively, signature of his father Narayan Chandra Singh Roy is marked as Exhibit A/2 and signature of the another witness namely Mr. Prasad Kumar Mitra is marked as Exhibit A /3. He has also identified the Death Certificate of his father Narayan Chandra Singha

Roy and is exhibited as Exhibit B. Death Certificate of testatrix is marked as Exhibit D.

3. The plaintiff during his evidence has stated that his mother had executed the Will on 20th October, 1987 by appointing him and his father Anil Kumar Nandy as executors and in his absence the plaintiff was appointed as executor. The father of the plaintiff died on 28th of December 1997 and the Death Certificate of the father is marked as exhibit E.
4. Considered the submission made by the Counsel for the plaintiff, perused original Will, death certificates and the statement of the witnesses. This Court finds that the testatrix had executed her last Will and Testament on 20th October, 1987 by appointing her husband as well as her son that is the plaintiff herein as executors of a last Will but her husband died on 28th of December 1997. Testatrix had executed her last Will and Testament in presence of two attesting witnesses namely Narayan Chandra Singha Roy and Prasad Kumar Mitra but none of the witnesses are available and accordingly the plaintiff had examined one attending witness who was present at the time of execution of the Will by the testatrix and he is also the son of one of the attesting witness. The attending witness has categorically stated in his evidence that he was present at the time of execution of Will by the testatrix and the testatrix was mentally and physically fit. He has further stated that two of the attesting witnesses have signed the said

Will in his presence and he has identified the Will, signature of the testatrix as well as signatures of the attesting witnesses.

5. In view of the above, this Court finds that the plaintiff has proved the Will and is entitled to get probate as per the last Will and Testament dated 20th October, 1987 executed by the testatrix Arati Nandy.
6. Prayer (a) of T.S. No. 16 of 2013 is allowed subject to compliance of all formalities. At the time of grant of probate, the copy of the Will be made as part of the probate.
7. **TS No. 16 of 2013** is thus **disposed of**.

(Krishna Rao, J.)