

OD-3

IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY AND INTESTATE JURISDICTION
ORIGINAL SIDE

TS 4 OF 2021
IN THE GOODS OF:
CHANDRA KUMAR KASERA (DEC.)
AND
RAJEEV JHUNJHUNWALA
VS
SANJAY KUMAR KASERA

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 6th October, 2023.

Appearance:
Mr. Sabyasachi Sen, Adv.
Mr. Supratim Laha, Adv.
For propounder

The Court : The plaintiff, namely, Rajeev Jhunjhunwala being the executor appointed under the last Will of Chandra Kumar Kasera(testator) dated 6th February, 2013 applied for grant of probate by filing the application being PLA 59 of 2020.

The testator at the time of his death on 2nd December, 2019 was survived by his widow, his three married daughters and one son as his legal heiresses and heir in intestacy.

The testator's son Sanjay Kumar Kasera did not consent to the grant and had filed a caveat followed by an affidavit in support of caveat affirmed on 18th February, 2021. On the said affidavit being filed, the probate proceedings assumed

contentious character and was declared so. The application was allotted a testamentary suit no. being TS 4 of 2021.

On 16th December, 2022, the following issues were framed in the presence of the defendant.

ISSUES

- (1) Is the Will dated 6th February, 2013, the last Will and Testament said to have been left behind by the deceased?
- (2) Is the Will genuine and valid?
- (3) Did the testator have testamentary capacity at the time of executing the Will and Testament dated 6th February, 2013?
- (4) Was the testator suffering from ill health and mental incapacity as alleged by the defendant?
- (5) Is the Will a product of fraud as alleged by the defendant?
- (6) Was the Will dated 6th February, 2013 executed under undue influence as alleged by the defendant?
- (7) Are there any suspicious circumstances encircling the Will dated 6th February, 2013?

The plaintiff/propounder has examined one witness, namely, Priya Ranjan Dutta, who was one of the attesting witnesses to the Will dated 6th February, 2013. In fact, the said witness had affirmed an affidavit on 10th January, 2020 to prove the Will in common form. The said attesting witness in course of his examination-in-chief has

said that the testator was the father-in-law of his employer, Rajeev Jhunjhunwala, the plaintiff.

The attesting witness has also deposed that he had gone to collect a document at the registration office at B.B.D. Bag on 6th February, 2013 when he met Chandra Kumar Kasera (testator).

On meeting the said Chandra Kumar Kasera at the registration office, Chandra Kumar Kasera had requested him to be an attesting witness to his Will. There was also another person, namely, Bal Krishna Asopa present at the said registration office. The attesting witness has also said that he along with Bal Krishna Asopa and Narayan Chandra Samanta accompanied Chandra Kumar Kasera into the Registrar's room where Chandra Kumar Kasera signed the document being his last Will dated 6th February, 2013 in the presence of the said witness and Bal Krishna Asopa. Thereafter the said attesting witness (Priya Ranjan Dutta) signed followed by Bal Krishna Asopa. The testator had put his signature in the presence of the said witness, Bal Krishna Asopa and the witness as also Bal Krishna Asopa signed in the presence of each other when the testator (Chandra Kumar Kasera) was also present.

The witness has identified the signatures of the testator, Bal Krishna Asopa and that of himself in the Will dated 6th February, 2013 which are marked as exhibits on being tendered. The Will dated 6th February, 2013 is a registered Will and has been registered in the office of the Additional Registrar of Assurances-III, Kolkata.

The defendant did not appear after 31st March, 2023 as the learned Advocate for the defendant applied for and was permitted to retire from the brief on 31st March, 2023 since he was not receiving any instruction from his client. Subsequent thereto

several notices were served by the plaintiff to the defendant as directed by the Court and an administrative notice was also sent to the defendant from this Court. Despite receipt of the notices including the administrative notice, the defendant did not appear to cross-examine the attesting witness. The defendant has also chosen not to lead any evidence.

The grounds of objection raised by the defendant which necessitated the issues to be framed also remained unsubstantiated as no evidence has been led by the defendant despite being afforded all opportunities.

The issue no.1, in the facts and circumstances as aforesaid, is decided in favour of the plaintiff. The issue nos.2 and 3 are taken up together. The Will dated 6th February, 2013 is a registered Will and unless a strong case is made out doubting the genuineness of such Will, the Will has to be accepted to be genuine. The defendant has not led any evidence to question the genuineness of the Will though he had questioned the same in his affidavit in support of caveat which has been subsequently treated as the written statement. That the testator himself had gone to the registration office to get the Will executed and registered as deposed by the attesting witness in the absence of any contrary view proves the testamentary capacity of the testator as on the date of making of the Will. The subject Will is, therefore, also a valid document. In the absence of any evidence being led by the defendant with regard to issue nos.4 and 5, the allegation made by the defendant that the testator was suffering from ill-health and mental incapacity is not substantiated. It cannot also be held without any evidence being led that the Will in question is a product of fraud or had been executed under undue influence. No suspicious circumstances are found encircling the Will in

question in the absence of any evidence from the side of defendant though the version of the attesting witness that he had met Chandra Kumar Kasera at the registration office, the said Chandra Kumar Kasera all on a sudden asked the witness to be an attesting witness may not be free of doubt. In absence of any proof from the side of the defendant, I also do not find any suspicious circumstances encircling the Will dated 6th February, 2013 from the materials on record.

The same is a valid and genuine document in view of the discussion as aforesaid. The testator had due testamentary capacity as on the date of execution of the Will. The testator was also not suffering from any ill-health or mental incapacity on the date of execution of the Will. The Will is not a product of fraud or the testator was made to execute the Will through undue influence. There are also no suspicious circumstances encircling the Will. In the aforesaid facts and circumstances after considering the materials on record and the deposition of the attesting witness, I hold that the Will has been proved.

The probate of the Will dated 6th February, 2013 is granted to Rajeev Jhunjhunwala, the executor and plaintiff in the Testamentary Suit no.4 of 2021.

The testamentary suit being TS 4 of 2021 is, accordingly, disposed of directing the department to issue the probate certificate to the plaintiff at the earliest.

(ARINDAM MUKHERJEE, J.)