

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

PLA 106 of 2013

**In The Goods Of :
Nikhil Ranjan Datta (Dec.)**

Mr. Rupak Ghosh

Mr. Avirup Chatterjee

.....For the petitioner

Heard on : 10.01.2023

Judgment on : 13.01.2023

Krishna Rao, J.: -

The petitioner has filed the instant application for grant of probate of last Will and Testament dt. 16.01.2004 of the testator Nikhil Ranjan Datta @ N.R. Datta son of late Shyama Charan Dutta.

Mr. Rupak Ghosh, Learned Advocate representing the petitioner submits that the Testator Nikhil Ranjan Datta executed his last Will and Testament on 16.01.2004 by appointing the petitioner as executor. The testator died on 19.10.2004 leaving behind only one legal heir i.e. his son

Tapas Datta. The mother, father and wife of the testator were pre-deceased to the testator. The testator had executed his last Will and Testament in presence of three attesting witnesses out of which one of the witnesses is the son of the testator and the same was also duly notarized before the Notary Public.

Mr. Ghosh submits that the son of the testator and one of the attesting witness of the Will namely Rajesh Damani have filed their affidavit in support of the petitioner. To prove the last Will and Testament, the petitioner had examined two witnesses i.e. P.W.1, Shri Rajesh Damani i.e. one of attesting witness and P.W.2, the petitioner himself on commission.

The attesting witness of the Will namely Rajesh Damani in his evidence has stated that on 16.01.2004 the testator had called him at his residence at Salt Lake, Kolkata and when he reached the residence of the testator, he found one advocate, his son and the other attesting witness namely, Giriraj Dagar were also present at the house of the testator. He further stated that in presence of all the persons in the house of the testator, the testator had executed the Will and the son of the testator, the witness and the other attesting witness namely, Giriraj Dagar have signed in the Will as attesting witness. The said witness has identified the Will as well as the signature of the testator and the signature of the witnesses. Witness no. 2 during his evidence as stated that the testator was treating the petitioner as his younger brother. He and his wife use to take care of the testator after the death of the wife of the testator. During his evidence, he has produced the Death Certificate of the wife of the testator who died on

18.09.2002, the Death Certificate of the mother of the testator and the Death Certificate of the testator. The petitioner has also stated that the son of the testator, Tapas Datta has filed his affidavit stating that he has no objection for grant of probate to the petitioner and the son of the testator had the knowledge of the Will as he is also one of the attesting witnesses of the said Will.

Considered the submissions of the Learned Counsel for the petitioner, statement of the witnesses, original Will, Death Certificates and affidavit of the son of the testator. This Court finds that the testator has executed his last Will and Testament by appointing the petitioner as executor in presence of three witnesses out of which the son of the testator is also one of the witnesses of the said Will. The son the testator has also affirmed an affidavit by stating the fact that he has no objection for grant of probate to the petitioner. This Court finds that there is no circumstance of any suspicion about the last Will and Testament executed by the testator on 16.01.2004, thus the petitioner is able to prove the last Will and Testament of the testator.

In view of the above, this Court finds that there is no impediment for grant of probate to the petitioner of the last Will and Testament dt. 16.01.2004. Accordingly, prayer (a) of the probate application is granted to the petitioner.

At the time of grant of probate, the copy of the Will be made as part of the probate.

PLA 106 of 2013 is thus **disposed of**.

(Krishna Rao, J.)