

IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY AND INTESTATE JURISDICTION

PLA/284/2021
IN THE GOODS OF:
KRISHNA DEVI CHOWDHURY (DEC.)

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 9th February, 2023.

Appearance:
Mr. Debasish Chattopadhyay, Adv.
Mr. Tirthankar Basu, Adv.
Mr. Loknath Paul, Adv.
For the petitioner.

The Court :- On a plain reading of the Will being the subject matter of this probate application two contingencies are noticed. Firstly, the probate can be applied for only after the death of Banarasi Lal Chowdhury the brother of the husband of the testatrix. The second contingency is that the beneficiary Lalita Debi Shaw only after having attained the age of 60 years is entitled to the benefit of the grant and that too after obtaining consent from the heirs in intestacy of the testatrix.

In the application there is no pleading that Banarasi Lal Chowdhury had died prior to the death of the testatrix, but a death certificate of the said Banarashi Lal Chowdhury has been annexed. The testatrix died on 16th September, 1999 admittedly prior to the death of Banarasi Lal Chowdhury as appears from his death certificate. Even if the benefit of the death of Banarasi Lal Chowdhury is given by taking into account the fact that the probate proceeding has been filed only on 9th September, 2021 after his death then also the

statement as to the age of Lalita Debi Shaw is missing in the body of the application. Only in the cause title it is stated that Lalita Debi Shaw is aged about 61 years. The affidavit of assets, however, filed by Lalita Debi Shaw in this proceeding provides that Lalita Debi Shaw is aged about 60 years. The cause title is verified and the affidavit of asset is affirmed. The difference in age though both the documents were filed at the same time is only one year. The age of Lalita Debi Shaw at the time of applying for the grant is taken to be 60 years. Further time has elapsed in between. So the second contingency is also taken care of.

Considering all these dates and that the legal heirs/heirsses of the testatrix who would otherwise have inherited the property in case of her death in intestacy has given consent, I am inclined to grant probate.

After considering the view of the department upon complete scrutiny, let probate be granted in the matter by passing an order in terms prayer (a) of the petition.

The petition for grant of probate stands disposed of, accordingly.

(ARINDAM MUKHERJEE, J.)