

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

PLA 371 OF 2021
IN THE GOODS OF:
BIBHUTI BHUSHAN MALLIK (DEC.)

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 4th August, 2023.

Appearance:
Mr. Supratim Laha, Adv.
Mr. Debasish De, Adv.
Ms. D. De, Adv.
For petitioner

The Court : This is an application for grant of probate of the last Will and Testament left behind by Bibhuti Bhushan Mallik on 25th May, 2007. The Will is a registered Will. Both the attesting witnesses have died prior to the death of the testator. The Will has, therefore, directed to be proved in solemn form though the proceedings is non-contentious. The Will has been sought to be proved by the attending witness, who has filed an affidavit to that effect in the proceedings at the time of filing of the application.

The propounder has examined the attending witness. The attending witness is an advocate's clerk. He has deposed that the testator and the attesting witnesses had come to the registering authority and signed in his presence and in the presence of each other before the registrar. The attending witness has said that on the date of execution and registration of the Will he was asked to be present by the advocate Ajit Kumar Sen and as such he had reached the office of the registering authority and after the testator, the attesting witnesses including the advocate had reached the office, all of them went to the registrar's office. The attending witness has also deposed that the testator signed the Will first and thereafter it was signed by the two attesting witnesses one after

the other. The signature of the testator and the attesting witnesses were affixed at the office of the Registrar of Assurances–III, Kolkata. The attending witness has also identified the signature of the testator and the attesting witnesses affixed to the Will in question. The attending witness has also identified the signatures of the testator and Ajit Kumar Sen, who was in a dual capacity as an attesting witness as also the draftsman of the Will. The signatures of Ajit Kumar Sen and the testator appearing at the reverse of the first page of the Will which was put in for the purpose of registration have also identified by the attending witness.

After considering the evidence of the attending witness and the arguments advanced from the Bar, I find that the Will has been proved in solemn form by the attending witness. The attending witness is a law clerk and it is quite natural that his services had been hired by the learned advocate. The learned advocate according to the attending witness is dead. There is thus a strong presumption that the witness who claims to be an attending witness was actually present at the time of execution of the Will and its registration. No one opposes the grant or comes forth to cross-examine the attending witness or to rebut the presumption.

Let probate of the last Will and Testament 25th May, 2007 left behind by Bibhuti Bhushan Mallik son of Late Chandra Kishore Mullick lastly residing at premises No.1/3, Durga Pithuri Lane, Kolkata 700 012 be granted to Santanu Mullick, the executor and applicant.

The probate proceedings being PLA 371 of 2021 is disposed of accordingly.

(ARINDAM MUKHERJEE, J.)