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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Testamentary & Intestate Jurisdiction
ORIGINAL SIDE

IA No.GA/1/2023
In
PLA/185/2013

IN THE GOODS OF :
BROJENDRA NATH BHATTACHARYYA @ BROJENDRA NATH
BHATTACHARJEE (DECEASED)

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : October 12, 2023.

Appearance :
Mr. Debmalya Ghosal, Adv.
Mr. Ayan Dutta, Adv.
Mr. Ranjit Kumar Basu, Adv.
... for the petitioner in PLA/185/2013 &
respondent in GA/1/2023

Mr. Aritra Basu, Adv.
Mr. Ashis Kumar Chowdhury, Adv.
Mr. Souradip Banerjee, Adv.
Mr. Rajib Ghosh, Adv.
... for the caveator in PLA/185/2013 &
applicant in GA/1/2023

The Court: Mr. Debmalya Ghosal, learned counsel, is appearing for the petitioner in PLA/185/2013 and respondent in GA/1/2023 and Mr. Aritra Basu, learned counsel, is appearing for the caveator and petitioner in GA/1/2023.

The petitioner has filed the present application being PLA/185/2013 for grant of probate of the last Will and Testament dated 20th December, 1981 wherein the testator has appointed the petitioner as executor of his last Will and Testament.

The testator died on 9th January, 1989 leaving behind five sons and two daughters. The first wife of the testator was predeceased to the testator and the second wife of the testator died on 9th July, 1997. All the legal heirs except one of the sons of the testator, namely, Madhusudan Bhattacharjee, have filed their affidavits of consent. Madhusudan Bhattacharjee has filed his caveat along with affidavit in support of his caveat. During the pendency of the application for grant of probate and before the acceptance of the affidavit in support of caveat, Madhusudan Bhattacharjee has filed an interlocutory application being GA/1/2023 praying for removal of the executor of the Will and for appointment of an Administrator. At the time of hearing of interlocutory application being GA/1/2023, Madhusudan Bhattacharjee has filed his affidavit of consent stating that he has accepted the last Will and Testament dated 20th December, 1981 executed by his father Brojendra Nath Bhattacharya also known as Brojendra Nath Bhattacharjee and in the said affidavit he has given his consent for grant of probate in respect of his last Will and Testament dated 20th December, 1981 by stating that he has no objection for grant of probate to the petitioner. One of the attesting witnesses of the Will, namely, Sankar Prosad Ganguly has also filed his affidavit in support of the last Will and Testament dated 20th December, 1981 and stated that the testator has executed his last Will and Testament in his presence and in presence of the other attesting witness while the testator was possessing good health and fit state of mind. He has further stated that the testator has appointed the petitioner as executor of his last Will and Testament.

Counsel for the petitioner submits that as all the legal heirs including Madhusudan Bhattacharjee has filed their affidavits of consent and one of the attesting witnesses has also filed his affidavit confirming that the testator has executed his last Will and Testament by appointing the petitioner as the sole executor while possessing good health and fit state of mind, accordingly, the petitioner has proved the Will and he prays for grant of probate.

Considered the submission made by the counsel for the petitioner. Perused the affidavits of all the legal heirs including the affidavit of Madhusudan Bhattacharjee and the attesting witness.

Initially, one of the sons of the deceased testator, namely, Madhusudan Bhattacharjee has not consented for grant of probate and he has filed affidavit in support of caveat but the same was not accepted and is pending for acceptance. In the meantime, Madhusudan Bhattacharjee has filed an application being GA/1/2023 and during the hearing, Madhusudan Bhattacharjee has filed affidavit of consent raising no objection for grant of probate to the petitioner.

This Court considered the original Will, death certificate of the testator, his wives, affidavits of all the legal heirs and the attesting witness.

This Court finds that the petitioner has proved the Will and there is no circumstances for suspicion over the execution of the Will by the testator Brojendra Nath Bhattacharya also known as Brojendra Nath Bhattacharjee.

Accordingly, the petitioner is entitled to get probate in respect of the last Will and Testament dated 20th December, 1981.

Let probate be issued after compliance of all formalities.

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

Mr. Madhusudan Bhattacharjee, who filed the application being GA/1/2023, has not pressed and has submitted his affidavit of consent for grant of probate. Accordingly, PLA/185/2013 and GA/1/2023 are disposed of accordingly.

(KRISHNA RAO, J.)

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