

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

PLA 426 of 2019

**In The Goods Of :
Buddhadev Bose (Dec.)**

Mr. Chandan Kumar Lal

.....For the petitioner

Heard on : 20.03.2023

Judgment on : 28.03.2023

Krishna Rao, J.: -

The petitioner has filed the present application for grant of probate of the last Will and Testament dated 24th October, 2013 of the Testator Buddhadev Bose.

As per the case of the petitioner, the testator has executed his last Will and Testament on 24th October, 2013 by appointing the petitioner as Executrix of his last Will. The Testator died on 30th July, 2019 leaving behind his wife, Manjusri Bose, Son, Debjyoti Basu and a daughter, the petitioner herein.

The wife and the son of the testator have submitted their respective affidavit stating that the testator has executed his last Will and Testament on 24th October, 2013 by appointing the petitioner as executrix and they have No-Objection for grant of probate.

In the said Will, there are two attesting witnesses out of which one of the attesting witness namely Dr. Shiladitya Nandi has put the date below his name in the Will as "22.10.2013". The said witness had also filed his affidavit stating that the testator has affixed his signature in the said Will in his presence and as per the request of the testator, he has also signed in the Will as attesting witness. In the affidavit, he has also stated that at the time of execution of the Will, the testator was able body and was in fit state of mind. He has also stated that the testator has made his daughter as executrix of the Will.

As per the Will, the testator has executed the Will on 24th October, 2013 but one of the attesting witness has put the date in the said Will as 22.10.2013 and accordingly the petitioner has examined the attesting witness namely Dr. Shiladitya Nandi on commission on 15th February, 2023 and during his examination on commission also the witness has stated that *"I have signed the Will on 22nd October, 2013 and believe the date to be correct."*

This Court perused the original Will which is in Bangla language and the translated copy of the Will in English language is also annexed with the application. The original Will is of handwritten Will and as per the Will, it was drafted by the testator himself and he has put the date in the Will as per

Bangla Calendar and also as per English Calendrer. The date in the Will mentioned as 24th October, 2013 and in Bangla it is written as “*Finis/Dated 6th Kartik, 1420 B.S*”.

The Will is a registered Will and the date of registration is also 24th October, 2013. In the Will, there are two attesting witnesses but the petitioner has examined only one witness and the date of signature of the witness in the will is different from the date of execution of the Will by the testator and also date of registration.

The testator has to execute his Will in according to the provisions of Section 63 of the Succession Act, 1925. The Will shall be attested by two or more witnesses, each of whom seen the testator sign or affix his mark to the Will. Attestation of Will means to testify of signatures of the executant. It is not a merely formality. To be valid a Will should be attested by two or more witnesses and propounder should examine one attesting witness to prove the Will. Attesting witness should speak not only about testator’s signature or affixing his mark to the Will but also each of the witnesses had signed the Will in presence of the testator.

To be an attesting witness, it is essential that the witness should have put his signature for the purpose of attesting that he has seen the executant sign or has received from a personal knowledge of his signature. If, a person put his signature on the document for some other purpose, he is not an attesting witness.

In the present case, it is the case of the petitioner that the testator has executed Will on 24th October, 2013 but as per Will and the evidence of one of the attesting witness he has signed the Will on 22nd October, 2013. At the time of examination of the attesting witness, he has also clarified that date is correct. The other attesting witness was not examined.

In view of the above, this Court finds that the petitioner has not proved the Will and thus no probate can be granted.

PLA 426 of 2019 is thus **dismissed**.

(Krishna Rao, J.)