

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

PLA 320 of 2013

**In The Goods Of :
Debendra Chandra Poddar (Deceased)**

Mr. Sabyasachi Chowdhury

Mrs. Aparajita Rao

Mr. S. Tribrewal

Ms. Ankana Basu

.....For the petitioner.

Hearing Concluded On : 04.09.2023

Judgment on : 06.09.2023

Krishna Rao, J.: -

1. The petitioner has filed the present application being PLA No. 320 of 2013 for grant of probate of the registered Will and Testament dated 27th August, 2002 of the testator, Debendra Chandra Poddar.
2. Mr. Sabyasachi Chowdhury, Learned Advocate representing the petitioner submitted that the testator has executed a Will on 27th August, 2002 by appointing Debabrata Poddar as executor failing

which the petitioner as the executor of the said last Will and Testament. Debabrata Poddar being one of the executors has not come forward for filing of an application for grant of probate of the Will and accordingly the petitioner has filed the present application for grant of probate. The Testator died on 1st November, 2006 leaving behind his wife Manisha Poddar and two sons Debabrata Poddar and Debasish Poddar.

3. After issuance of Special Citations and General Citations, none of the legal heirs have either filed their caveat nor have filed their affidavit in support of the Will.
4. To prove the Will, the petitioner has examined two witnesses namely, Debasish Poddar, who is one of the sons of the testator as well as one of the attesting witnesses of the Will dated 27th August, 2002 and Shri Satya Narayan Soni who has drafted the Will dated 27th August, 2002.
5. During the evidence, the witness no. 1, Debasish Poddar, the signatures of the testator appearing in the Will which were marked encircled in red pencil were marked as Exhibit-A/1 to Exhibit-A/6 respectively and the signature of the witness was marked as Exhibit-B and signature of the wife of the testator who is also one of the attesting witness is marked as Exhibit-C.
6. The witness no. 2 namely, Satya Narayan Soni who has drafted the Will has identified the Will and stated that he has drafted the said Will as per the instruction of the testator. He has also identified the signature of the testator as well as the other two attesting witnesses. The

signature of the witness no. 2 in the said Will is marked as Exhibit-D and the Will is marked as Exhibit-E.

7. The Registrar, Testamentary and Intestate Department has submitted a report that no caveat has been entered for grant of probate of the last Will and Testament.
8. The witness no. 1, Debasish Poddar who is one of the attesting witnesses of the Will as well as the son of the testator, during his evidence has admitted his signature, the signature of his father and signature of his mother in the said Will but he has stated that he has not signed any paper containing such writing. The witness no. 2 who has drafted the Will, during his evidence has categorically stated that he has drafted the Will as per the request of Debendra Chandra Poddar and all the persons have signed in the said Will in his presence and has also identified the signature of testator and the attesting witnesses i.e. the wife of the testator and son of the testator.
9. Mr. Chowdhury relied upon Section 71 of the Evidence Act, 1872 which reads as follows :

“71. Proof when attesting witness denies the execution.—If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.”

10. Mr. Chowdhury in support of his contention has relied upon the judgment reported in **(2015) 8 SCC 615 (Jagdish Chand Sharma –vs-**

Narain Singh Saini & Ors.) and submitted the witness no. 1, Debashis Poddar who is the son of the testator stated that the signatures appears to be of mine and the other signature appears to be that of my father but the witness no. 2 has categorically stated that he has drafted the Will and in his presence, the testator and witnesses have signed in the Will and he has identified the Will and signatures of the witnesses and also of the testator.

11. Considered the submissions made by the Counsel for the petitioner, perused the application, original Will, death certificate of the testator, report of the Registrar, Insolvency and the judgments relied upon by the petitioner. This Court finds that the testator has appointed his son Debabrata Poddar as executor of his last Will and failing which the petitioner herein but after the death of testator, Debabrata Poddar being the executor has not come forward for grant of probate and accordingly the petitioner being one of the executors of the last Will and Testament has filed the present case for grant of probate.
12. The notice of the present proceeding was duly served upon all the legal heirs of the testator including the executor Debabrata Poddar but none of them has come forward to file caveat for grant of probate.
13. The petitioner has proved the Will by adducing two witnesses out of which one witness is the attesting witness of the Will and another witness is the person who has drafted the Will as per the advice of the testator. The witness no. 1 who is one of the attesting witnesses of the

Will as well as the son of the testator stated that the signature appears to be of mine and other appears to be of my father and my mother, but the witness no. 2 during his evidence has categorically proved that as per the request of the testator, the witness no. 2 has drafted the Will as per instruction of the testator and in his presence, the testator, his wife and his son have signed in the said Will and has identified the said Will as well as the signature of the testator and the attesting witnesses including the signature of the witness no. 1. The witness has proved the Will by complying with the provisions of Section 71 of the Indian Evidence Act, 1872 by examining the witness no. 2 who has drafted the Will and in his presence the testator and attesting witnesses have signed the Will.

14. In view of the above, this Court finds that the petitioner has proved the Will and there is no circumstance of suspicion about the execution of the Will and as such the petitioner is entitled to get probate of the last Will and Testament dated 27th August, 2002.
15. Accordingly, prayer (d) of the application is allowed subject to compliance of all formalities. At the time of grant of probate, the copy of the Will be made as part of the probate.
16. **PLA No. 320 of 2013** is thus **disposed of**.

(Krishna Rao, J.)