

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

APD 426 of 2015

With

TS 3 of 2003

IA No: GA 3 of 2019 (Old No : GA 2854 of 2019),

GA 5 of 2022, GA 6 of 2022, GA 7 of 2022 & GA 8 of 2022

Shri Amit Bhar

Versus

Dhananjoy Bhar & Others.

Mr. Debojyoti Basu
Mr. Diptimoy Taluker
Mr. Abhiraj Tarafder

.....For the appellant

Mr. Sabyasachi Choudhury
Mr. Rajarshi Dutta
Mr. Sayantan Bose

.....For the respondents

Heard on : 10.11.2022, 02.12.2022 & 15.12.2022

Judgment on : 17.03.2023

Krishna Rao, J.: -

This is an appeal directed against the judgment passed by the Learned Single Judge in T.S. No. 3 of 2003 dt. 19th August, 2015 which was further corrected on 9th September, 2015.

1. Introduction with brief outline :

- a. *The respondent Dhananjay Bhar had initially preferred an application before the Learned Single Judge being PLA No. 190 of 2001 for grant of probate of the last Will and testament dt. 1st December, 1999 executed by the Testator Dulal Chandra Bhar, since deceased. In the said application, the respondent had stated that the father Dulal Chandra Bhar had appointed the appellant and respondent herein as executors of the said last will and testament being the sons of the testator but the appellant being the one of the executor was not interested to act as an executor and thus the respondent has filed the said application.*
- b. *In the said application, it was further stated that the father (testator) died leaving behind his wife, two sons and three daughters but the respondent unable to obtain consent from the other legal heirs of the testator.*
- c. *After filing of probate application, the mother Smt. Urmila Bhar, daughters namely Dipti Paul, KumKum De, Ruma Sen and the appellant Amit Bhar have filed their respective affidavits in support*

of their caveat by objecting for grant of probate as prayed for by the respondent.

- d. On receipt of the affidavit in support of caveat from the caveators, i.e the other legal heirs of the deceased Dulal Chandra Bhar, the Learned Single Judge had converted the probate application to Testamentary Suit and was numbered as T.S. 3 of 2003.*

2. PLEADINGS OF THE PARTIES

- a. The mother of the appellant and the respondent namely Smt. Urmila Bhar had filed an affidavit wherein she stated that her husband and his brother used to carry on Palm Candy Business initially under the name and style of “Dulaler Tal Michri” which they have inherited from their father and subsequently her husband started independently Palm Candy Business in the year 1980 as per the order of this Court under the name and style of “Dulal Chandra Bharer Tal Michri”. She has also stated that her husband had also other businesses in which she and her two sons were the partners/share holders and apart from the aforementioned proprietorship business, there is a company by the name of Sanjay Himghar Private Limited situated at Rasidpur, Hooghly in which all of them owned their number of shares.
- b. She has further stated that by the reason of the purported Will, two of the major business have been given to her elder son (the respondent herein) due to which she and her younger son have

become minority in business and virtually her elder son has become the owner of the businesses. She further stated that in the purported Will she was not given even a living right in respect of the premises no. 3A, Duff Lane, Kolkata in which the dwelling house of the Bhar family are residing.

- c. She had further stated that her husband on many occasions had informed her that he will divide his assets equally between three sons and would make adequate provisions for her upkeep and wellbeing. She had further stated that her husband on number of occasions had stated that suitable provisions for the daughters as well as grand children through his sons and daughters will be made.
- d. She has further stated the relationships between all of us were quite cordial and her husband had lot of love and affection for his children and grandchildren. She has also stated that her husband for quite sometimes prior to his death was suffering from various ailments like hypertension, high blood sugar, renal and cardiac problems and was frequently admitted to the nursing home. She has further stated that the so called purported Will dated 01.12.1999 is unnatural and there was no intention of her husband to make the said Will.
- e. The daughter Dipti Paul has also filed her affidavit wherein she had objected to the Will and stated that her father was sick and was

not physically and mentally fit to decide or to make such Will. Similarly, the other daughters as well as the respondent have filed their respective affidavits challenging the Will.

3. ISSUES:

a. On the basis of the pleadings and the suggested issues filed by the appellant, the Learned Judge has framed the following issues :

1. Did the testator Dulal Chandra Bhar had testamentary capacity in executing the Will in question dated December 1, 1999?

2. Is the Will unnatural and shrouded by suspicious circumstances?

3. Did the testator execute the Will out of his free will without being influenced by any persons?

4. Is the petitioner entitled to get probate of the Will?

4. EVIDENCES OF THE PLAINTIFF'S WITNESSES :

a. During the evidence, the respondent being the plaintiff had adduced three witnesses in support of the Will namely :

- i. Aniruddha Guha – one of the attesting witness of the Will.*
- ii. Dr. Sachindra Kumar Bardhan - another attesting witness of the Will.*
- iii. Dhananjoy Bhar – Plaintiff (Respondent herein) himself as one of the executor of the Will.*

b. P.W.1 namely, Aniruddha Guha stated in his evidence that he is an Advocate by profession and is practicing in Income Tax matters.

Since, 1970, he is dealing with the income tax matter of Dulal Chandra Bhar. He is one of the attesting witnesses of the Will executed by the deceased Dulal Chandra Bhar, he had identified the signature of Dulal Chandra Bhar in the Will and the signature of Dulal Chandra Bhar are marked as Exhibit 'A1' to A12. He stated that on 01.12.1999 when he was in his chamber, he was requested by Dulal Chandra Bhar to report in the chamber of Mrs. Maya Bhadra and accordingly he went to the said chamber and found that in the chamber of Maya Bhadra, Dulal Chandra Bhar and other two gentlemen were also present. In his presence, Dulal Chandra Bhar had signed the Will and the witness along with other two witnesses namely, S.K. Bardhan and Sukumar Datta had signed in the said Will as attesting witness. He has also stated that Dulal Chandra Bhar was having good sound mind and good health at the time of execution of the Will. The said witness was cross-examined by the Learned Counsel for the defendant at length and during the cross examination, the witness stated that he had only introduced Mr. Bhar to Mrs. Maya Bhadra and he don't know what is in the Will itself so that it is not possible for him to comment on the Will.

- c. On 19.08.2015, the witness no. 2, Dr. Sachindra Kumar Bardhan and Dhananjay Bhar were examined as P.W.2 and P.W.3. The P.W.2, Dr. S.K Bardhan stated that D.C Bhar had requested him to be present at the office of Maya Bhadra and accordingly he went to

the office and had signed one document as witness. He has also stated that along with him another witness Aniruddha Guha had also signed in the said Will as witness. He has stated that D.C. Bhar might have suffered from COPD, diabetes but this decease was not likely to affect his mental health.

- d. P.W.3, Dhananjoy Bhar who is the plaintiff has examined himself as witness in the said case to prove the Will.
- e. The Counsel for the appellant had cross examined the witness no. 1 but has not cross examined the witness nos. 2 and 3 . As on the date fixed, the counsel for the appellant had prayed for adjournment before the learned Single Judge, the adjournment was rejected and the learned Single Judge continued to record the evidence of the witnesses produced by the respondent. On the very same day, the learned Single Judge had also passed Judgment which is impugned in the instant appeal.

5. FINDINGS OF THE LEARNED SINGLE JUDGE :

- a. Learned Single Judge while passing the Judgment has recorded that *“at the commencement of examination in chief of the second witness for the plaintiff and on several occasions thereafter repeated prayers for adjournments have been made on behalf of the defendant on the ground that he was briefed in the matter today itself and he is not in a position to do the cross examination of the second witness of*

the plaintiff. The Counsel for the plaintiff strongly opposes the prayer for adjournment and points out that the hearing of the suit has been taken on previous occasions. Prior to commencement of hearing at least two adjournments were taken at the instance of the defendant. The 1st witness of the plaintiff was examined on one day and cross examined on the next day. Learned Single Judge held that the witness produced by the plaintiff is a doctor by profession and he has left his work to attend the Court and the defendant was well aware that the present witness should be produced by the plaintiff today but the defendant has chosen to delay the hearing of the suit and accordingly the adjournment was rejected.”

b. The Learned Single Judge while passing judgment held that the defendant did not produce any witness and the defendant did not advance any argument at the time of hearing. The plaintiff through the witnesses had established that the testator has executed the Will in presence of the attesting witnesses and the attesting witnesses have signed in presence of each other in presence of the testator.

c. The first witness of the plaintiff being a Tax Consultant was cross-examined on behalf of the defendant. Nothing of substance has come out of such cross examination of such witness which indicates against the plaintiff.

d. The second witness produced on behalf of the plaintiff is a doctor and he has stated that he had treated the testator during his lifetime and had also issued medical certificate to the deceased which has

been produced before the income tax authorities and the testator had the mental capacity to execute the Will but the said witness was not cross-examined.

e. The third witness of the plaintiff was the propounder of the Will and he has stated that his father was sufficiently agile so as to vote in the Kolkata Municipal Corporation election held two days prior to the death of the testator.

f. The learned Judge after going through the evidence as discussed above has come to the conclusion that the issues framed in the suit have been proved and there is no such suspicious circumstances or a finding that the Will is unnatural and accordingly the learned Judge has granted probate to the respondent in terms of prayers (a) and (e) of the plaint.

6. GROUNDS FOR CHALLENGING THE IMPUDGNEED JUDGMENT:

- I. For that the Learned Judge erred in holding that the application for grant or probate is maintainable ;*
- II. For that this Hon'ble Court has no jurisdiction to hear and adjudicate application for grant of Probate where the fixed place abode of the testator is within the city of Kolkata and accordingly the decree appealed against is null and void;*
- III. For that the testator had fixed place of abode within Police Station, Burtolla and under section 5(3) of the City Civil Court Act, 1953 this Hon'ble Court has no jurisdiction to try and proceedings under the Indian Succession Act, 1925 and as such the decree appealed against is a nullity and the Court has no jurisdiction to pass any order or decree on the said application for grant of Probate ;*
- IV. For that the application for grant of Probate by one of the joint executors is not maintainable since the testator appointed two executors who are to obtain probate jointly.*

- V. *For that the testator in the alleged will says “I, jointly by making this final testament do appoint my sons Shri Dhananjoy Bhar and Shri Amit Bhar the executors and trustees.....”. “Both the said executors shall have the power of obtaining probate etc. of this instrument.....”. Thus, by reason Section 224 any one of the executor cannot apply for the Probate ;*
- VI. *For that the Learned Judge erred and overlooked the fact that the Will was not proved by the profounder of the Will;*
- VII. *For that the Will was exhibited at the time of recording deposition of the first witness of the plaintiff being one of the attesting witnesses without the contents of the Will;*
- VIII. *For that the contents of the Will was not properly proved but was erroneously admitted as exhibit “A” without evidence ;*
- IX. *For that the Learned Judge erred in holding that the other contestants/ defendants had withdrawn from the contest which is incorrect since the Defendants filed Affidavit-in-Support of their individual caveat ;*
- X. *For that the Learned Judge erred in holding that the testator used to live independently without any evidence or materials on records ;*
- XI. *For that the Learned Judge erred in not granting an opportunity to the contesting defendants to cross examine the second and third witness of the plaintiff ;*
- XII. *For that the Learned Judge erred in holding that the defendant did not discharge his duty to remain present at the hearing, though the defendant appointed an Advocate-on-Record with the authority to appoint a Learned Counsel if required and on 29.07.2015 the Learned Counsel so appointed appeared in Court and cross examined ;*
- XIII. *For that the appellant on 19.08.2015 was helpless as he had already engaged a Learned Advocate on record who had also appointed a Learned Counsel whose appointment was not withdrawn or they did not retire with the leave of the Court ;*
- XIV. *For that the Learned Judge erred in not considering the affidavits of the appellant and other defendants filed in support of the caveat and in particular the affidavit of the mother of the appellant ;*
- XV. *For that the Learned Judge erred and overlooked the fact that the contents of the Will dated 01.12.1999 was not proved by the draftsman as to whether it was drafted as per the instruction of the testator.*

- XVI. *For that summons was not served upon Kalyan Sen and Debasish Sen ;*
- XVII. *For that the Learned Judge erred in law in holding that no issue relating to execution of the alleged will was raised ;*
- XVIII. *For that the Learned Judge erred in not considering the prescriptions and pathological reports showing that the testator was suffering from various ailments and mentally incapable of exercising discretion and as such had no Testamentary capacity to execute a Will.*
- XIX. *For that the Learned Judge erred in holding that there is no material on record to suggest that the testator did not execute the Will out of his free will and consent.*
- XX. *For that the Learned Judge did not consider that the testator being sick was influenced by the respondent not to execute the Will.*
- XXI. *For that the alleged Will was drawn as per the desire and instruction of Shri Dhananjay Bhar respondent No. 1 herein ;*
- XXII. *For that the Learned Judge erred and misdirected himself in not considering the fact that Dr. Madon Mohan Das, was the physician who used to treat the testator and not Dr. Sachindra Kr. Bardhan the witness No. 2.*
- XXIII. *For that the Learned Judge did not consider the unnatural and the suspicious circumstances surrounding to the making of the Will as stated in the affidavits of the appellant herein and the other defendants in the suit;*
- XXIV. *For that the Judgment dated 19.08.2015 and the decree passed in Testamentary Suit No. 3 of 2003 is bad in law and in equity, void and thus liable to set aside ;”.*

7. DURING PENDENCY OF APPEAL :

- a. At the time of hearing of appeal the appellant has filed an application under Order XLI, Rule 47 of the Code of Civil Procedure, 1908 praying for bringing additional documents in evidence.
- b. The appellant has filed the application to produce some additional evidence which the appellant reasonably believes that the said

documents will raise several questions towards making of the alleged Will of the deceased as well as the conduct of the plaintiff/respondent.

c. The appellant submits that after exercise of due diligence the appellant could not produce the said evidence at the time of taking evidence before the learned trial court as the appellant did not get an opportunity to adduce evidence.

d. The appellant submitted that there are several documents which will aid to the Court for appropriate adjudication of the instant appeal and justice can be delivered only after examining each and every document which the appellant intends to produce before this Court as an additional evidence.

e. The respondent has filed written objection to the application filed by the appellant with regard to additional evidence and submits that the appellant did not lead any evidence in the suit but the appellant had the opportunity to do so. He further submits that the appellant had the opportunity to cross-examine the witnesses of the respondent/plaintiff but the appellant has not cross examined the witnesses despite several opportunities granted by the learned Single Judge in the suit.

f. The respondent submits that the appellant had not urged any ground in the appeal about the denial of opportunity being granted to the appellant to lead evidence in the testamentary suit.

g. The respondent submits that during the pendency of the suit the appellant had filed an application for examination of the mother, Smt. Urmila Dhar, on commission and the said application was also allowed but the appellant failed to examine the mother on commission and unfortunately the mother died on 13 February 2011.

h. The respondent submits that none of the documents which the appellant intends to bring on record as additional evidence can be said to be relevant for the purpose of determining either the testamentary capacity of the testator or valid execution of the last Will and testament of the testator or the genuineness of the last Will and testament.

8. SUBMISSIONS OF THE PARTIES :

Submissions on behalf of the appellant:

a. The Counsel for the appellant submits that the death certificate of the testator which was marked as Exhibit G issued by Kolkata Municipal Corporation regarding the place of death of the deceased at 3A, Duff Lane Kolkata, runs contrary to the additional documents relied upon by the appellant being the certificate of the deceased issued by the doctor who attended the deceased after his death on 27 June 2000 at 8 PM and the exhibit G was issued on the basis of the certificate of the doctor. The death certificate dated 27 June 2000 issued by Dr. Trithankar Bagchi reveals that the residence and chamber of the doctor are near to Gariahat/Ballygunge and Rasbehari

area, both located at South Kolkata. The counsel for the appellant submits that why no local Doctor was involved for the purpose of taking death certificate of the deceased and why assistance of Doctor from South Kolkata was taken which is about 15 to 16 kms from North Kolkata.

b. Learned counsel for the appellant submits that no surviving legal heirs of the testator including the wife have given any consent to the respondent for grant of probate of the alleged Will.

c. Learned counsel for the appellant submits that Maya Bhadra, the learned advocate, was behind the alleged stories of the respondent which were cooked in the manner that the deceased did not know any advocate and on the fateful day the income tax lawyer (PW1) was introduced to Maya Bhadra, Advocate for the first time at the High Court chamber.

d. Learned counsel for the appellant submits that within a span of one and half hours since after introduction of the deceased to the Learned Advocate, Maya Bhadra not only drafted, prepared but also got executed the Will and the same was signed by attesting witnesses. Learned counsel for the appellant further submits that the same Advocate Maya Bhadra had filed the probate application being an Advocate for the respondent before the learned single Judge.

e. Learned counsel for the appellant submits that from Exhibit B, that is the assessment order dated 30 March 1998 against the assessee

Dulal Chandra Bhar for the assessment year 95-96 and it also appears from the order that the deceased did not appear and he was represented by the respondent on all the days on 26 March 1998, 27 March 1998 and 30 March 1998, he submits that it is admitted that the deceased was quite aged and was suffering from various ailments and usually did not go outside.

f. Learned counsel for the appellant submits that the learned Judge while passing the impugned judgment has not considered the affidavit and written statement of the appellant wherein the appellant has denied with regard to execution of the Will by the deceased on 1 December 1999. He further submits that the intention of the deceased was to distribute his assets and Palm Candy business as well as the cold storage into equal shares between the appellant and the respondent but the respondent has got the premium business of the deceased namely Palm Candy and cold storage as well as many immovable properties that is dwelling house situated at 3A, Duff Lane, Kolkata.

g. Learned counsel for the appellant submits that making of the alleged Will was kept as a closely guarded secret and none of the legal heirs of the deceased including the appellant and the mother Urmila were ever known or disclosed about the existence of the alleged Will prior to receiving of a special citation from the respondent. He further submits that the alleged Will clearly militates against all known and declared intention of the deceased particularly in respect of the widow.

h. Learned counsel for the appellant submits that the widow in her affidavit specifically stated that all along the intention of her deceased husband was to distribute his assets equally between the Dhananjay and Amit and also the deceased could make adequate provision for the upkeep and well-being of the widow Urmila. He further submits that the mother in her affidavit further stated that she was all along with the deceased throughout their married life and particularly at this age when he was suffering from various ailments for which he was frequently taken to nursing homes. He further submitted that the mother had also specifically stated that due to the ailment of the deceased, it was not possible for him to exhibit the alleged Will on 1 December 1999.

i. Learned counsel for the appellant further submits that the mother had also stated that no adequate arrangements were made in the alleged Will for the widow including her living right at the dwelling house despite of the fact that several assets were left behind by the deceased.

j. Learned counsel for the appellant submits that the Palm candy business was run by the deceased along with his brother under the name and style of "Dulaler Tal Michri" which they had inherited from their father and subsequently the deceased started Palm Candy business independently from the year 1980. As per the compromise order passed by the Hon'ble High Court in the year 1986 the deceased started palm candy business under the name and style of "Dulal

Chandra Bharer Tal Michri” and thus the deceased was acquainted with the advocates therefore the statement of PW1 (Aniruddha Guha) that the deceased did not know any advocate and requested Mr. Guha to introduce him with any advocate for preparation of Will is not only false but also incorrect and unfounded.

k. Learned counsel for the appellant submits that as per the evidence of P.W.1 the deceased was taken to the chamber of Maya Bhadra for the first time on 1st December, 1999 than how the two witnesses, that is Dr. S.K. Bhardhan and Sukumar Dutta, were present during the time of making the alleged Will.

l. Learned Counsel for the appellant further submits that the witness Aniruddha Guha has admitted that he did not introduce the deceased to Maya Bhadra, Learned Advocate prior to December 1, 1999. He further submits that during the cross examination, Mr. Aniruddha Guha stated that *“I cannot comment on this because I do not know what is written in the Will itself”*.

m. Learned counsel for the appellant submits that the deceased died on 27 June 2000 and was cremated on the following day but as per the additional documents volume II, page 60 the respondent had purportedly included his wife, Sumona Bhar, as Director of the business namely “Sanjay Himghar Pvt. Ltd.” on the very day when the deceased was cremated. He submits that the purported resolution of the Board meeting of Sanjay Himghar Pvt. Ltd. was allegedly held on the day of cremation of the deceased wherein the respondent alone

put his Digital Signature in FORM No. DIR12 for the purpose of inducting his wife Sumona as Director of the said Company.

n. Learned counsel for the appellant submits that both the HUF jewellerys and monies received out of selling of HUF jewellerys by the deceased were taken away by the respondent secretly for his personal and wrongful gain as per the alleged last Will and Testament which is appearing at pages 115 to 131 of the additional document volume-I.

o. Learned counsel for the appellant relied upon the additional documents in volume-I and submits that the appellant could not get an opportunity to bring all the said document on record and if an opportunity is given to the appellant by allowing to bring the said documents on record, the appellant will be able to prove that the Company "Bhar Foods Private Limited" being the company of the respondent and his wife which shows that they were running their business from the office of Dutta, Chakraborty & Mondal, where Sukumar Dutta was the chartered accountant who is one of the attesting witness of the alleged Will dated 1st December, 1990. There are several documents, to prove that the age of the deceased as age mentioned in the alleged Will is not correct.

p. Learned counsel for the appellant submits that the deceased had executed his previous Will on 17th April, 1995 wherein the deceased was desirous of giving life interest to his wife over all his immovable and movable properties after his death and the said Will is in the

handwriting of the father. Two annual Dividend plans and two ICICI bonds dated September 24, 1999 were made in the joint name of both his sons. Several medical reports of the father have been annexed but none of the report shows that Dr. S.K. Bardhan had looked after him but Dr. M.M. Das has treated the father on most of the occasions.

q. He further submits that the documents deal with investment in the name of the father and Oindrila Bhar which were not included in the list of assets by the respondent. The trade mark of Dulal Chandra Bhar was filed by the respondent declaring himself as proprietor of the said business without any leave of this court.

r. Learned counsel for the appellant further submits that the letter dated June 30, 2014 of late Maya Bhadra shows that there were 15,256 shares as on that date in the name of Sanjoy Himghar Private Ltd. The documents also show that induction of Sumona Bhar on June 28, 2000 as director of the said company and that is the date of cremation of the father.

s. Learned counsel for the appellant relied upon the Judgment reported in **2008 SCC online Cal 406 (Maya Sinha & Ors. – vs- Somendra Sinha @ Somendra Prasad Sinha & Ors.)** and submits that the conduct of the propounder at the time and after the death of the testator raises suspicion.

t. He further relied upon the Judgment reported in **1959 SC 443 (H. Venkatachala Iyengar –vs- B.N. Thimmajamma and Others)** and

submits that whether the testator understood the nature and effect of the deposition of the Will and whether he put his signature knowing the contents of the Will, the deposition made in the Will is unless satisfactorily discharged, the Court would be reluctant to treat the document as the last Will and Testament. If there is a suspicious circumstance surrounding the execution of Will, the propounder must remove the said suspicion from the mind of the court by cogent and satisfactory evidence.

u. He relied upon the Judgment reported in **(2021) 11 SCC 277 (Shiv Kumar and others -versus- Sharanabasappa and Others)** and submitted that whether the evidence led by the propounder of the Will is such as to satisfy conscience of the court that the Will was duly executed by the testator. It is impossible to reach at such satisfaction unless the party which sets up the Will offers cogent and convincing explanation of the suspicious circumstances surrounding the making of the Will.

v. Learned counsel for the appellant relied upon the Judgment reported in **(2021) 11 SCC 209 (Kavita Kanwar -versus- Pamela Mehta and Others)** and submits that probate proceeding is ultimately a matter of conscience of the court and irrespective of whether any plea of opposition is taken or not, a propounder of the Will is required to satisfy the conscience of the Court with the removal of all suspicious circumstances. By the very nature and consequences of this proceeding filing or non filing of written statement by any party

falls into insignificance and is of no effect. The probate proceeding is not merely between parties proceeding but leads to judgment in rem and, therefore, even when no one contests, it does not *ipso facto* leads to a grant of probate. The probate is only granted on proof of Will and also removal of suspicious circumstances to the final satisfaction of conscience of the Court.

w. Learned counsel for the appellant relied upon the Judgment reported in **(2009) 1 SCC 354 (K. Laxmanan -versus- Thekkayil Padmini and Others)** and submits that when there are suspicious circumstances regarding the execution of Will, the onus is also on the propounder to explain them to the satisfaction of the Court and only when such responsibility is discharged, the Court should accept the Will as genuine.

x. Learned counsel for the appellant relied upon the Judgment reported in **(1977) 1 SCC 369 (Smt. Jaswant Kaur -versus- Smt. Amrit Kaur and Others)** and submits that it is impossible to reach to the satisfaction unless the party setting up the Will offers cogent and convincing explanation of the suspicious circumstances surrounding the making of Will.

y. Learned counsel for the appellant relied upon the Judgment reported in **(2015) 5 SCC 588 (Maya Devi -versus- Lalta Prasad)** and submits that the absence of defendant does not absolve the trial court from fully satisfying itself of the factual and legal veracity of the plaintiffs claim, any, this features of the litigation casts a greater

responsibility and onerous obligation on the trial court as well as the Executing Court to be fully satisfied that claim has been proved and substantiated by the plaintiff

z) Learned counsel for the plaintiff relied upon the Judgment reported in **(1982) 1 SCC 20 (Indu Bala Bose & Ors. -versus- Manindra Chandra Bose and Another)** and submits that the mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a Will by section 63 of the Succession Act. The onus of proving on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus.

aa) Learned counsel for the appellant relied upon the Judgment reported in **AIR 1962 SC 567 (Rani Purnima Debi and Another -versus- Kumar Khagendra Nath Deb and Another)** and submits that mere fact that a Will is registered will not itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought to the home of the testator and that the document of which he was admitting execution was a Will disposing of his property and thereafter he had admitted execution and signed in token thereof, the registration will

dispel the doubt as to the genuineness of the Will. But if the evidence as to the registration shows that it was done in a perfunctory manner, that the officer registering the Will did not read over the contents to the testator or did not bring home to him that he was admitting the execution of the Will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the Will) that the testator knew that it was a Will the execution of which he was admitting, the fact that the Will was registered would not be of much value.

bb) Learned counsel for the appellant relied upon the Judgment reported in **(2015) 17 SCC 713 (Andisamy Chettiar -versus- A. Subburaj Chettiar)** and submits that an application under Order 41, Rule 27 CPC is to be considered at the time of hearing of the appeal on merit so as to find out whether the documents and/or evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of the additional evidence does not depend upon the relevancy of the issues on hand, or on the fact, whether the appellant had an opportunity for adducing such evidence at the earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

cc) Learned counsel for the appellant relied upon the Judgment reported in **(2022) 7 SCC 247 (Sanjay Kumar Singh -versus- State of Jharkhand)** and submits that one of the circumstances in which the production of additional evidence under Order 41, Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

dd) Learned counsel for the appellant relied upon the judgment reported in **(2018) 10 SCC 484 (Uttaradi Mutt-versus-Raghavendra Swamy Mutt)** and submits that where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and the interest of justice clearly renders imperative that it may be allowed to be permitted on record, such application may be allowed.

Submissions on behalf of the respondent :

ee) Mr. Choudhury representing the respondent submits that the Will published on December 1, 1999 of the testator Dulal Chandra Bhar is in Bengali language and is a registered document. At the time of filing of probate application, the English translated copy of the Will is also enclosed with the probate application.

ff) Mr. Choudhury submits that the affidavits submitted by the daughters supports the statement made in support of caveat by the

appellant as well as their mother but the daughters have not filed any appeal against the impugned judgement and decree

gg) Mr. Choudhury submits that before the learned Single Judge an application was filed for recording of evidence of mother on commission and accordingly the said application was allowed. In spite of the order passed by the learned single Judge by appointing Commissioner for examination of the mother on commission and even after several opportunities the evidence of the mother was not recorded and unfortunately on 11th July, 2009, the mother expired. Mr. Choudhury submits that the learned counsel for the appellant failed to offer any explanation why and under which circumstances even after appointment of commissioner, evidence of the mother was not recorded through commission.

hh) Mr. Choudhury submits that it reveals from record of the suit that the appellant has repeatedly taken adjournment to complete the formalities that is discovery and inspection of the documents as well as filing of suggested issues and even thereafter several opportunity was given to the appellant, the appellant has not filed the suggested issues and accordingly on the basis of the suggested issues of the respondent/plaintiff the learned single Judge has framed the issues and the appellant has not raised any objection with regard to the issues framed by the learned single Judge or suggested any additional issues.

ii) Mr. Choudhury submits that the Hon'ble Judge having determination of the suit matters used to follow day-to-day hearing of the suits but when the witnesses on behalf of the plaintiffs were present, the appellant being the defendant repeatedly sought for adjournments. In the impugned judgment the Hon'ble Judge has recorded the conduct of the defendant which establishes that defendant was given sufficient opportunity to participate at the hearing.

jj) Mr. Choudhury submits that the first witness was examined and cross-examined on July 29, 2015. Thereafter the Hon'ble single Judge had fixed the matter on 19 August, 2019 for examination of second and third witness of the plaintiff but on the said date again the appellant had prayed for an adjournment on the ground of change of advocate but the learned single Judge has rejected the prayer by assigning the reason in the judgment dated August 19, 2019.

kk) Mr. Choudhury submits that on August 19, 2019 after rejecting the prayer of the respondent the learned single Judge had recorded the evidence of second and third witness of the respondent and has also heard the learned counsel for the plaintiff and had passed the judgment but even thereafter the respondent has not taken any steps for recalling of the said order before filing of the instant appeal.

ll) Mr. Choudhury submits that even before this Court the appellant has not filed any application for adducing any further evidence or additional evidence from 2015 till 2022 and when this Court has

taken up the appeal for hearing, after the period of seven years the appellant has filed an application under Order XLI Rule 27 of the Code of Civil Procedure only to delay the proceedings.

mm) Mr. Choudhury submits that the second witness namely, Dr. Sachindra Kumar Bardhan, being one of the attesting witness of the Will had deposed that the mental capacity was sound and the said witness had also referred to his earlier medical certificate being Exhibit "D" which was produced before the income tax authorities on earlier occasion wherein it was certified that the testator was suffering from COPD diabetes mellitus etc.

nn) Mr. Choudhury submits that the PW-2, Dr. Sachindra Kumar Bardhan also deposed before the Court that the testator might have suffered from these diseases but these diseases were not likely to affect his mental capacity. Mr. Choudhury submits that it cannot be said only for the purpose of this Will Dr. Sachindra Kumar Barhdan was made as witness to the Will but the said doctor had also treated the testator on earlier occasions and the Medical Certificate issued on earlier occasion was exhibited as Exhibit "D".

oo) Mr. Choudhury submits that the respondent herein in his evidence had stated that on April 1, 2000 had been to the office for "Khata Pujo" and April 15, 2000 on the day of "Paila Baishakh" the testator had attended function and two days before his death the testator had gone to cast his vote along with his wife on June 25, 2000.

pp) Mr. Choudhury submits that the first witness during his cross-examination had stated that the testator was of sound mind and was possessing good health. Mr. Choudhury submits that from the evidence of the witnesses, the respondent had proved his case before the learned Single Judge that the testator had executed the will without any undue influence and while possessing good health.

qq) Mr. Choudhury submits that though the appellant had filed affidavit in support of caveat but no particulars have been disclosed as to why the Will can be said to be unnatural and under which circumstances the Will is to be said to be under suspicious circumstances. He further submits that the respondent has proved the evidence that Dr. Sachindra Kumar Bardhan not only first time stood as witness of the Will but the said doctor had examined the testator on earlier occasion also.

rr) Mr. Choudhury by referring to Question No. 46 during cross-examination of PW1 submits that recording of one and half hour is the typographical error and the actual period is one or half years. On referring the said question Mr Choudhury submits that Question No. 44 is the typographical error. He further submits that even assuming the Will was prepared within one and half hours of introduction there cannot be any unusual or suspicious about the said Will.

ss) Mr. Choudhury submits that the association of Mr. Sukumar Dutta, the chartered accountant with the testator was since 1991 and Mr. Dhananjay Bhar had utilized his service in getting Memorandum

of Association subsequent to the death of testator in 2000 and thus it cannot be said that, he is an interested witness of the said Will.

tt) Mr. Choudhury submits that perusal of the Will would show that the testator has distributed his businesses to both his sons. The decision to give the Palm Candy business to the elder son while giving the entire 30% share in the wholesale handloom cloth business to the respondent is absolutely the discretion of the testator. He further submits that in the Will it has been recorded that all three daughters were happily married and living in their respective husbands family and the testator had spent to the best of his capacity in their marriage according to the social and family custom but the testator has still provided money for his married daughters, where each daughters have been provided with Rs. 1,00,000/- each from the Unit Trust Returns.

uu) Mr. Choudhury further submits that similarly the widow has also been provided with a sum of ₹ 5 Lacs and thus it cannot be said that the testator has not provided sufficiently to his wife. Mr Chowdhury submits that during the lifetime the testator had ensured that premises No. 180, Bidhan Sarani, Kolkata being the joint family property of the Bhars, was already in the name of the mother who had an undivided half share.

vv) Mr. Choudhury submits that there are no other suspicious circumstances. The testator had provided for all of his heirs sufficiently and adequately and therefore it cannot be questioned. He

further submits that even in cases where some of the heirs have not been provided for at all, then also the Will would not be either suspicious or unnatural.

ww) Mr. Chowdhury submits that it has already been established that the testator was living independently till the time of his death and none of the sons were staying with the testator. He further submits that there is no evidence on record to show that the testator was influenced by any other person.

xx) Mr. Choudhury submits that the application filed by the appellant under Section 107 and Order 41 Rule 27 of the Code of Civil Procedure is not maintainable in the present case as the appellant did not lead any evidence in the testamentary suit when the appellant had the opportunity to do so. Mr. Choudhury submits that in the Memorandum of Appeal the appellant has not urged any ground about the denial of opportunity being granted to the appellant to lead evidence in the testamentary suit.

yy) Mr. Choudhury submits that by an order dated May 11, 2009 the learned single Judge had allowed the application filed by the respondent for examination of the mother on commission but in spite of the opportunity provided by the court to the appellant, the appellant failed to take opportunity to examine the widow on commission. Mr. Choudhury submits that the appellant has filed the instant application at the belated stage when the counsel for the

appellant had already concluded his submission in his appeal on merit.

zz) Mr. Choudhury submits that the application filed by the appellant does not contain any ground or reason for the non-production of the purported documents or evidence which are now sought to be produced before this court. It is further submitted that the application also contains no averment or evidence to establish that due diligence had been exercised by the appellant before the learned trial court and despite such diligence the said purported documents were not within the knowledge or could not be produced by the appellant before the learned trial court.

aaa) Mr. Choudhury submits that the purported documents sought to be produced before this court cannot be said to be relevant for the purpose of determining either testamentary capacity of the testator or the valid execution of the last Will and testament of the testator or the genuineness of the last Will and testament.

bbb) Mr. Choudhury relied upon judgment reported in ***AIR 1959 SC 443 (H. Venkatachala Iyengar -versus- B.N. Thimmajamma and Others)*** and submits that the respondent has proved the Will before the learned Single Judge by complying the provisions of Section 63 of the Indian succession by adducing the evidence of the propounder as well as two of the attesting witness of the Will and from the said evidence of the attesting witness the learned single Judge has come to

the conclusion that the respondent has proved the Will and accordingly the prayer for grant of probate was allowed.

9. DECISION WITH REASONS:

The appellant has filed an application under Order 41, Rule 27 of the Code of Civil Procedure for the purpose of appropriate adjudication of the instant case. It is finding from the record that the appellant had filed three volumes of additional documents out of which the documents appearing at page Nos. 26 to page No. 100 of Volume-1, the documents are already on record as the appellant had filed the same before the learned Single Judge at the time of filing of judges Brief of Documents. The remaining documents which the appellant intends to bring as an additional evidence at the appellate stage are connected with the business of the testator, Dulal Chandra Bhar, the deceased, Will executed by the deceased in the year 1995, handwriting of the deceased, on the date of cremation of the father, the respondent had brought the name of his wife as director of the business Sonjay Himgar Private Limited, the death certificate of Late Dulal Chandra Bhar, dated June 27 , 2000 issued by one Dr. Thrinthankar Bagchi having place of business and residence at extreme south of the city and clarified the death of Dulal Chandra Bhar at North Kolkata. The appellant had brought to the notice of this Court there are several documents which the appellant intends to rely upon to bring the actual fact before this Court to prove that the alleged Will was not executed by the father voluntarily, was not possessing good health at the time of execution of the alleged Will and there are suspicious circumstances in the said Will.

Under the scheme of Code of Civil Procedure, 1908 whether oral or documentary, it is the trial court before whom parties are required to adduce the evidence but in three exceptional circumstances additional evidence can be adduced before the appellate court as provided under Section 107 (1) (d) read with Rule 27 of Order 41 of the Code of Civil Procedure.

Order 41, Rule 27 of CPC reads as follows :

“27. Production of additional evidence in Appellate Court.- (1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—*

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the court shall record the reason for its admission.”

Section 107 reads as follows :

“107. Powers of Appellate Court.- (1) *Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-*

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.”

From the opening words of sub- rule (1) of Rule 27, quoted above, it is clear that parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacuna at the appellate stage. It is against the spirit of the provision to allow a party to file additional evidence without fulfilling of either of the three conditions mentioned in Rule 27. In the present case no application was moved before the trial court seeking production of additional documents and the documents which were already on record, the appellant being the defendant in the suit has not taken any steps to prove the same. Now it is to be seen whether the third condition that is one contained in clause(b) of sub-rule (1) of Rule 27 is fulfilled or not.

In the case of ***Union of India -vs- Ibrahim Uddin, reported in (2012) 8 SCC 148*** at para-49, the Hon’ble Supreme Court held that :

49. *An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."*

In the case of **A. Andisamy Chettair -vs- A. Subbaraj Chettiar** (*Supra*), the Hon'ble Supreme Court held that :

"8. *The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."*

As per order dated November 26, 2007, the learned single Judge has taken on record the affidavit of documents filed by the appellant. By order dated May 11, 2009 the application filed by the appellant was allowed by appointing Shri Ajit Sarkar, learned advocate as Commissioner for examination of Smt. Urmila Bhar on commission. By an order dated July 15, 2015 the learned single Judge had fixed the suit for hearing on July 29,

2015. By the said order it was clarified that in the absence of the defendants, the plaintiff will be at liberty to proceed ex parte. On July 29, 2015 examination of witness no. 1 of the plaintiff was concluded and the learned Single Judge had fixed the matter on August 19, 2015 for hearing.

The appellant has not made out any case in the application that the learned Single Judge has illegally refused the evidence although it ought to have been admitted and the evidence sought to be adduced by the appellant was not available with the appellant despite the exercise of due diligence. The appellant has taken the ground that additional evidence is necessary in order to enable this Court to deliver judgment. The appellant had cross examined the witness no. 1 of the respondent at length and at the time of cross examination, the Counsel for the appellant has not put any question to the said witness with regard to the documents which were already available on record, i.e. page Nos.26 to 100 of Vol No.1, as the same was the part of Judges Brief of Documents. The documents which the appellant intends to bring on record as additional evidence is of before filing of affidavit in support of caveat before the learned single Judge.

PW 1, who is one of the attesting witness of the Will and the appellant had cross examined the said witness by putting about 57 questions but the counsel for the appellant has not referred any documents to the said witness during his cross examination. Out of the other two witnesses, one of the witness is also the attesting witness and the other witness is the respondent, who is the Executor of the Will.

Important question put to PW1 during cross examination are as follows :

“42. So you will not also be in a position to dispute me if I say that on 1st December, 1999 at about 4 P.M. you do not have at the chamber of the advocate where you allege the purported will was executed ? I/disagree with you.

43. What was the occasion for you to suddenly visit the advocate’s chamber on 1st December, 1999 at about 4 P.M. which you deposed? /Dulal Chandra Bhar was my client. He went to execute the Will and ask me to do it. I did not deal with this matter. I know one Maya Bhadra whose chamber in the ground floor of my building. I was on the second floor. I said Mr. Bhar to introduce you with her who also stays nearby in your place. Then he agreed to meet Maya Bhadra and subsequently Mr. Bhar told me to come to her chamber. At the request of Mr. Bhar I came to the chamber of Maya Bhadra. The will was executed in front of me. I signed there in the presence of other witnesses.

44. So it is your case that you introduced Mr. Bhar to Ms. Maya Bhadra for the purpose of execution of the Will – can you tell My Lord about which time this introduction by you took place ?/ That is made one and half hour before execution of the Will.

46. In the interregnum one or half year which you say from the date of your introduction to the alleged date of execution of the Will, Mr. Dulal Chandra Bhar did not consult you about this matter? / No.

55. I suggest it to you that the signature in Exhibit C1 is apparently dissimilarity to the signature at A12 and that will be evident on bare perusal? / I do not agree.

57. Kindly take Exhibit B, did anyone else accompany you at the hearing on 30th March, 1998? / No, I did appear alone.

62. I suggest it to you that there was no Will executed by Dulal Chandra Bhar on 1st December, 1999 and the document which is sought to be propounded now had been brought into existence by the propounder with your assistance who is known to your for a quite some time? / I do not agree.

63. I also suggest it to you that Dhananjoy Bhar is very closed to you and as such, you had on his request without seeing signing on the document being the alleged Will dated 1st

December, 1999 you had put your signature over there which you have identified it to be Exhibit A13? / I disagree.

66. I also suggest it to you that on 1st December, 1999 Dulal Chandra Bhar was not in proper physical and mental health to understand about disposition of its properties and assets? /I do not agree.

86. I suggest to you that the document sought to be propounded as the alleged Will of Dulal Chandra Bhar dated 1st December, 1999 is a product and undue influence, coercion and fraud. / I do not agree.”

P.W.2 is also one of the attesting witnesses of the Will and also a doctor by profession. In his examination he has stated that the mental capacity of the testator was sound and he has also referred to his earlier medical certificate being Exhibit “D” which was produced before the Income Tax authorities on earlier occasion which proves that the PW2 had treated the testator before he signed as attesting witness in the Will. The PW 2 had also clarified that he might have suffered from COPD, diabetes mellitus etc. but these diseases were not likely to affect his mental capacity.

P.W.3, the propounder himself, was examined as witness and during his evidence he has deposed that on 1st April 2000 the testator had been to the office for “Khata Pujo” and on 15th April 2000, the day of “Paila Baisakh”, the testator had gone to attend the function and two days before his death the testator had gone to cast his vote in the Kolkata Municipal Corporation election along with his wife.

The wife of the testator has filed caveat and affidavit in support of her caveat but at the time of her examination, as per the prayer of the appellant, a commissioner was appointed to examine the wife of the testator on

commission but inspite of several opportunities, the appellant has not examined the mother to prove her contention made in the affidavit in support of her caveat.

Vide order dt. 29th July, 2015, the learned single Judge had fixed the matter for hearing on 19th August, 2015, the respondent/plaintiff had examined two witnesses and on the same day the learned Single Judge had delivered judgment. In the judgment the learned Judge had recorded that :

“Learned Advocate for the defendant submits that he has been briefed in two matters today itself and, therefore, he is not in a position to cross-examine the second witness of the plaintiff.”

Learned advocate for the plaintiff strenuously opposes the prayer for adjournment. He points out that the hearing of this suit has been taken as the previous occasion. Prior to commencement of hearing, at least two adjournments were taken at the instance of defendant. The first witness of the plaintiff was examined on one day and was cross-examined on the next date. The then conducting advocate for the defendant was different. Again on the prayer of the learned advocate for the defendant the hearing of the suit was adjourn till today.

I find that there is substance in the contention of the plaintiff. The hearing of the suit has commenced. At least two adjournments have given to the defendant to get ready with the hearing prior to its commencement. The first witness of the plaintiff was examined on one day, the cross examination was adjourn to the next date on the prayer of the advocate then appearing for the defendant. After conclusion of the cross-examination, the hearing of the suit was adjourned till today to allow the parties to conclude the hearing of the suit. Today different advocate appears for the defendants to pray for an adjournment. I am afraid, I am not in a position to accept such prayer.”

Though the learned Single Judge rejected the prayer for adjournment, but had not denied for cross examination of the witnesses but the counsel

for the appellant had not cross examined the witnesses and also not prayed for adducing any evidence or argue the matter, therefore the learned judge has no other option to pass judgment.

In the impugned judgment the learned judge has provided the reasons as to why the prayer for adjournment of the appellant was refused. Altogether four issues were before the learned Judge and each and every issue have been decided elaborately. It was categorically held that two attesting witnesses have stated that they have seen the deceased as well as the other attesting witnesses sign the Will in presence of each other and the execution of Will is established. There is no evidence to substantiate the claim of the appellant that, the execution of the Will was shrouded by suspicious circumstances and the Will is unnatural. The appellant did not lead any evidence and there is no material on record to suggest that the testator has not executed the Will out of his free Will and without being influenced by any person. Either in the grounds of appeal or in the application filed by the appellant has stated that the appellant has not been given an opportunity of hearing or adducing evidence.

On perusal of the Will would show that the testator has distributed his business to both of his sons. As per the submissions of the appellant the dispute is only with regard to the Palm Candy business which has been given to the elder son, respondent herein and 30% share in wholesale handloom cloth business is given to the appellant. As regard the wife of the testator, a sum of Rs. 5,00,000/- was provided to his wife and during the life time, the testator had ensured the premises no. 108, Bidhan Sarani,

Kolkata, being the joint family property of the Bhar's, was already in the name of the wife of the testator, who had an undivided half share. Though the daughters of the testator have initially filed their caveat and affidavit in support of their caveat but subsequently have not come forward to contest the probate proceeding and have also not filed any appeal.

The documents which the appellant intends to bring as additional evidence, this Court has perused the documents and found that documents appearing at page no. 26 to 100 at Vol No.1 was already on the record of the suit but the appellant has not exhibited the same during evidence. The other documents are also of prior to the filing of the suit and the appellant has not taken any steps before the learned Judge to bring the said documents on record. The learned judge has decided the suit by assigning well formed reasons, therefore, this Court is of the view that the said documents are not required to decide the instant appeal.

CONCLUSION :

Accordingly, the probate granted by the Learned Single Judge by the Judgment dated 19th August, 2015 in T.S. No. 3 of 2003 as corrected on 09.09.2015 is not interfered.

Receivers appointed by the learned single Judge dt. 27th July, 2015 which was modified by this Court vide order dt. 30th September 2015 and the order dt. 22nd April, 2022 are hereby vacated and the Receivers are directed to hand over the accounts along with all documents to the respondent within four weeks.

In view of the above, **APD No. 426 of 2015** with **GA No. 8 of 2022** are thus **dismissed. GA No. 3 of 2019, GA No. 5 of 2022, G.A. No. 6 of 2022 & GA No. 7 of 2022** are accordingly **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)

Later :

Learned Counsel for the appellant prays for stay of operation of the Judgment and order.

Learned Counsel for respondent raised objection to the submission of the learned Counsel for the appellant.

Considered the prayer for stay and rejected.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)