

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

TS 28 of 2015

In the Goods Of:
Gouri Rani Bose, Deceased
-And-
Amalendu Kumar Nandi
-Versus-
Pannalal Nandi & Ors.

Mr. Aniruddha Mitra

Mr. Dhilon Sengupta

.....For the plaintiff.

Heard on : 16.05.2023 & 18.05.2023

Judgment on : 12.07.2023

Krishna Rao, J.:

1. The plaintiff had initially filed an application being No. 98 of 1981 for grant of Letters of Administration of the assets of the deceased Gouri Rani Bose as the sole beneficiary. The deceased during her lifetime, executed and published a Will on 24th June, 1975 by appointing the plaintiff as sole beneficiary of the said Will. The deceased died on 16th

February, 1979 leaving behind altogether 14 legal heirs. After filing of the application general as well as special citations were issued. Kanak Kumar Nandi, one of the sons of the elder brother of the deceased, Panchanan Sinha son of elder sister of the deceased, Smt. Charusila Ghosh, sister of the deceased and Pannalal Nandi, brother of the deceased have filed their caveat as well as affidavit in support of their caveat. The other legal heirs have not filed any caveat on receipt of the citation even the said legal heirs have also not filed any affidavit of consent.

2. On receipt of the affidavit in support of their caveat, the proceeding of Letter of Administration has been converted into testamentary suit. During the pendency, the record the proceedings were misplaced and the same was traced out only in the year 2015 and thereafter the PLA application has been converted as TS No. 28 of 2015.
3. In the meantime, Charusila Ghosh died on 25th April, 1987 and upon her death, her legal heirs have been substituted and out of three legal heirs, one legal heir i.e. Alok Ghosh (son) also died on 28th July, 2014, accordingly, his legal heirs have been substituted.
4. On 22nd December, 2015, Kajal Ghosh died intestate leaving behind two legal heirs and his legal heirs have been substituted. Upon death of Pannalal Nandi, his legal heirs have also been substituted.

5. After substitution of all the legal heirs, several notices were sent but in spite of receipt of notice, none appears on behalf of the defendant and substituted legal heirs, accordingly, by an order dated 31st January, 2023, the suit was placed in the list of undefended suit.
6. As the Will is of 24th June, 1975 and the deceased died on 16th February, 1979 and the plaintiff had filed the application for grant of Letters of Administration in the year 1981 but in the mean time, the record of the suit was misplaced and only in the year' 2015, the record was traced out and testamentary suit number was allotted.
7. The plaintiff was examined as P.W.1 and during his examination, the Will dated 24th June, 1975 was marked as Exhibit-A, signature of the testator was exhibited as Exhibit-A/1, signatures of the attesting witnesses were exhibited as Exhibit- A/2 and A/3. During the evidence, the plaintiff stated that the testatrix has executed the Will in his presence and the attesting witnesses have also signed in the Will as witness in his presence. He further stated that none of the attesting witnesses are alive and one of the attesting witnesses, namely Nemai Chand Hazra has signed his affidavit before this Court in his presence at the time of filing of the application for grant of probate and he has also identified the said signature in the affidavit of the attesting witness.
8. During his evidence, he has also produced a passbook of United Bank of India, Bidhan Sarani Branch which is in the joint name of plaintiff and the testatrix and the said bank account was open in the year 1974.

He has also submitted that the property being 7A, Baishnab Sammilani Lane Street, Kolkata 700 006, is in possession of the plaintiff.

- 9.** Mr. Aniruddha Mitra, Learned Advocate representing the plaintiff submits that the Will is of 1975 and none of the witnesses are available but the petitioner was present at the time of execution of the Will and the petitioner has proved the Will wherein the petitioner is the beneficiary of the Will executed by the deceased.
- 10.** Mr. Mitra submits that plaintiff is entitled to get Letters of Administration as prayed for.
- 11.** Heard the learned Counsel for the plaintiff, perused the materials on record and the evidence of the plaintiff.
- 12.** The plaintiff is the youngest son of the testatrix and the testatrix has executed the Will on 24th June, 1975 by appointing the plaintiff as beneficiary of her Will with respect to all her movable and immovable properties. In the evidence, the plaintiff has categorically stated that both the attesting witnesses of the documents have expired but at the time of execution of the document by the deceased Gouri Rani Bose, the plaintiff was present and the plaintiff has identified the said document and the signature of the deceased Gouri Rani Bose and the signature of two attesting witnesses.
- 13.** The plaintiff has also identified the signature of one of the attesting witness who has affirmed affidavit at the time filing of the application

for grant of Letters of Administration. Initially some of the legal heirs have filed caveat along with an affidavit in support of caveat but subsequently none of the defendants came forward in support of their caveat.

14. Considering the above, this Court finds that the plaintiff has proved the case and there is no circumstance to create any suspicion, accordingly, the plaintiff is entitled to get Letters of Administration to the estate of the deceased Gouri Rani Bose.
15. Letters of Administration be issued to the plaintiff subject to execution of personal bond of Rs. 1 lakh with one surety on compliance of all formalities including payment of ad valorem duty if not paid.
16. **T.S No. 28 of 2015** is thus **disposed of**.

(Krishna Rao, J.)