

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

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

PLA 150 of 2015

**In The Goods Of :
Dr. Amalendu Sen, Deceased**

Mr. D. Ghosh, Sr. Adv.
Mr. A.K. Dhar, Adv.
Mr. S. Ghosh, Adv.
Mr. A. Basu, Adv.
Mr. S. Bhattacharyya, Adv.

.....For the petitioner

Heard on : 28.02.2023

Judgment on : 02.03.2023

Krishna Rao, J.: -

The petitioner, Dr. Manisha Das, W/o Dr. Biswanath Das had filed the instant application for grant of Letters of Administration of the Last Will and Testament of the Testator, Dr. Amalendu through her Constituted Attorney, Shri Angshuman Das as the petitioner is residing at 97, Copse Hill, Wimbledon, London SW20 ONJ, U.K.

The testator had executed his last Will and Testament on 10th July, 2009 in presence of two attesting witnesses by appointing the petitioner as

the executrix of his last Will with respect of his movable and immovable properties and the said Will is duly registered before the Additional Registrar of Assurance III, Kolkata on 10th July, 2009.

The testator died on 20th February, 2012 leaving behind the petitioner as his sole legal heir. The wife of the testator, Smt. Chameli Sen predeceased the testator on 4th August, 2006.

By an order dt. 7th August, 2015, this Court had granted Letters of Administration to the petitioner in terms of prayed (a) of the instant application. Subsequent to the order dt. 07.08.2015, the Assistant Registrar (Testamentary Department) brought to the notice of this Court that in paragraph 9 of the instant application, the petitioner has referred to an application filed before the District Court at Alipore in relation to a Will dated 22.06.2011 which appears to be a subsequent Will of which the present application has been filed by the petitioner for grant of Letters of Administration and an application for grant of Letters of Administration of the Will dated 22.06.2011 was pending before the Learned District Court at Alipore and accordingly by an order dated 07.10.2015, this Court had recalled the order dated 07.08.2015 and directed that the instant application shall be shown as pending.

By an order dated 18.04.2016, the original suit Case No. 26 of 2016 pending before the Learned District Court at Alipore in connection with the Will dated 22.06.2011 was transferred before this Hon'ble Court for adjudication. After transfer of the said case before this Court, the case was

renumbered as TS/24/2018 and accordingly by an order dated 09.02.2023, the said suit was dismissed for default.

TS 24 of 2018 on 09.02.2003, the Counsel for the petitioner prayed for disposal of the instant application.

The Constituted Attorney, namely Angshuman Das who is also one of the attesting witness of the last Will and Testament dated 10.07.2009 was examined before this Court and during this examination, the witness no. 1 stated that the Testator, Dr. Amalendu Sen had executed the Will on 10.07.2009 in his presence as well as in presence of another witness namely, Tandra Ghosh by appointing the petitioner as the Sole Executrix of his last Will and Testament. He further stated that the Testator had executed the Will by possessing good health and fit state of mind. He has identified the Will, signature of the testator, his signature, signature of the other attesting witness and the Death Certificate of the Testator. The Will is marked as Exhibit - 'A', signature of the testator is exhibited as Exhibit - 'A/1', signature of the witnesses have been exhibited as Exhibit - 'A/2' and Exhibit - 'A/2' and the Death Certificate of the Testator is marked as Exhibit - 'B'.

The petitioner has filed the instant application for grant of Letters of Administration as per the last Will and Testament dated 10.07.2009 through her Constituted Attorney in terms of Section 241 of Succession Act as the petitioner is residing out of the State at the address mentioned above and there is no other executor within the State.

Section 241 of the Succession Act reads as follows :

“241. *Administration, with Will annexed, to attorney of absent executor.—When any executor is absent from the State in which application is made, and there is no executor within the State willing to act, letters of administration, with the Will annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.”*

Initially this Court has granted Letters of Administration to the petitioner but subsequently the same was revoked by an order dated 07.10.2015 due to pendency of another case in connection with the subsequent alleged Will dated 22.06.2011 before the District Court at Alipore. By the order of this Court, the said suit was transferred before this Court to avoid the conflicting decision and the said suit was registered before this Court being T.S No. 24 of 2018. The said suit is dismissed for default on 09.02.2023 and thereafter no steps have been taken by the plaintiff in the said suit for restoration, accordingly, the petitioner has pressed this application for hearing.

Considered the submission made by the Counsel for the petitioner perused the evidence of witness no. 1, original Will and Death Certificate of the Testator. This Court finds that petitioner has able to prove that the testator had executed the Will on 10.07.2009 by appointing the petitioner as sole executrix with respect of his movable and immovable properties while possessing good health and fit state of mind. There is nothing on record to create any suspicious circumstances for execution of the Will by the testator.

In view of the above, the petitioner is entitled to get an order in terms of prayer (a) of the instant application. The petitioner is directed to furnish a personal bond of Rs. 2,00,000/- with one surety.

PLA 150 of 2015 is thus **disposed of**.

(Krishna Rao, J.)