

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Testamentary and Intestate Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

TS/9/2014
IA NO: GA/8/2019

IN THE GOODS OF :
RABIN KUMAR MITRA (DECEASED)

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : January 02, 2023.

Appearance:
Mr. Sukrit Mukherjee, Adv.
Mr. Anirban Pramanick, Adv.
Mr. P. Nath, Adv.
..for the plaintiff

The Court: Mr. Sukrit Mukherjee, learned Counsel is appearing for the plaintiff.

The plaintiff has initially filed the present application in PLA/104/2011 for grant of probate. Two of the legal heirs i.e. Sri Asha Mukul Mitra and Dr. Mrs. Sabita Mohanty have filed caveat as well as affidavit in support of caveat. On receipt of affidavit in support of caveat PLA/104/2011 is converted to the Testamentary Suit being TS/9/2014.

After the conversion as testamentary suit, the defendants/caveators failed to appear before this Court and accordingly, this Court has framed the issues and fixed the case as undefended suit vide order dated 17th July, 2023. To prove the Will, the plaintiff has examined himself as well as one of the attesting witnesses before this Court.

The attesting witness, namely, Brajendu Mishra, on oath stated before this Court that the testator Rabin Kumar Mitra executed the Will on 5th

November, 2004 by appointing the plaintiff as the sole executor of his last Will and Testament. During his evidence, he has stated that the testator has executed the Will in his presence as well as in presence of the attesting witness and he has identified the Will which is marked as Exhibit A and the signature of the testator was marked as Exhibit B. The signature of the attesting witness is marked as Exhibit C.

The plaintiff has also examined and during his evidence, he has produced the death certificate of the testator which proves that the testator died on 13th January, 2011.

Counsel for the plaintiff submits that the testator has executed the Will in favour of the plaintiff by appointing him as sole executor of his last Will and Testament and the said Will was executed in presence of the witness and one of the attesting witnesses had appeared before this Court and has proved the said Will.

Counsel for the plaintiff submits that out of four legal heirs two legal heirs have neither filed their consent nor filed their caveat but other two legal heirs filed caveat as well as affidavit in support of the caveat but subsequently, they failed to appear before this Court to disprove the Will as alleged in the affidavit in support of caveat.

Counsel for the plaintiff further submits that the plaintiff has proved the Will and the plaintiff is entitled to get probate.

Considered the submission made by the Counsel for the plaintiff.

Perused the original Will, death certificate, evidence of the executor as well as the evidence of one of the attesting witness.

This Court finds that the plaintiff has proved the Will which has been marked as Exhibit A and there is no circumstances to create any

suspicion over the execution of the said Will as the attesting witness of the Will during his examination, has categorically stated that the testator has executed the Will in his presence as well as in the presence of the other witness and at the time of execution of the Will, the testator was in fit state of mind and was possessing good health.

Considering the evidence and the materials on record, this Court finds that the plaintiff has proved the Will and the plaintiff is entitled to get probate.

Accordingly, Prayer (c) of the plaint (PLA/104/2011) is allowed subject to compliance of all formalities.

The Department is directed to issue the probate as per the last Will and Testament dated 5th November, 2004 and at the time of grant of probate, a copy of the Will be made part of the probate.

TS/9/2014 is disposed of.

IA No. GA/8/2019 is, accordingly, disposed of.

(KRISHNA RAO, J.)