

OD-20

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Testamentary & Intestate Jurisdiction
ORIGINAL SIDE

PLA/22/2021

IN THE GOODS OF:
DWIJENDRA NATH ADHIKARI, (DEC)

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : November 21, 2024.

Appearance

Ms. Debjani Ghosh, Adv.

Ms. Nafisa Yasmin, Adv.

Ms. Deblina Banerjee, Adv.

...for the Petitioner

The Court : Ms. Debjani Ghosh, learned Advocate, is appearing for the petitioner.

The petitioner has filed the present application for grant of probate of the last Will and Testament dated 19th February, 2010 of the testator Dwijendra Nath Adhikari, son of late Nagendranath Adhikari.

Counsel for the petitioner submits that the wife of the testator was predeceased the testator, died on 24th October, 2005.

The testator died on 9th December, 2016 leaving behind two sons and three daughters, out of which the petitioner, who is the executor of the last Will and Testament is one of the sons of the testator. The testator during his lifetime has executed his last Will and Testament on 19th February, 2010 by appointing the petitioner as executor of his last Will.

The petitioner submits that citations were issued to all the legal heirs of the testator but none of the legal heirs has filed caveat. Accordingly,

the department has submitted no caveat certificate on 30th September, 2021.

Counsel for the petitioner further submits that in the Will there are altogether three attesting witnesses, out of which one of the attesting witnesses, namely, Tapas Maity, has submitted his affidavit by confirming that the testator during his lifetime on 19th February, 2010 has executed his last Will and Testament by appointing the petitioner as executor of his last Will and Testament while possessing good health and fit state of mind.

Counsel for the petitioner submits that the petitioner has proved the Will and is entitled to get the probate of the Will dated 19th February, 2010.

Heard the learned counsel for the petitioner.

Perused the original Will, death certificate, no caveat certificate submitted by the department and affidavit of the attesting witness.

It is found that citations were issued but in spite of issuance of citations, none of the legal heirs have lodged their caveat. Accordingly, the department has submitted no caveat certificate.

One of the attesting witnesses has also submitted his affidavit stating that in his presence and in presence of other attesting witnesses, the testator has executed his last Will and Testament on 19th February, 2010 by appointing the petitioner as executor of his last Will and Testament while possessing good health and fit state of mind.

Considering the above, this Court finds that the petitioner has proved the Will beyond any reasonable doubt and thus the petitioner is entitled to get the probate of the Will dated 19th February, 2010.

The department is directed to issue probate to the petitioner of the last Will and Testament dated 19th February, 2010 after compliance of all formalities.

At the time of grant of probate, a copy of the Will may be made part of the probate.

PLA/22/2021 is disposed of.

(KRISHNA RAO, J.)