

OD-172

ORDER SHEET

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

TS/6/2020

IN THE GOODS OF:
BHAGIRATHI DEVI MASKARA, DECEASED

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: January 2, 2024.

Appearance :

Mr. Sukrit Mukherjee, Adv.

Mr. Anirban Pramanick, Adv.

Mr. Punarbanu Nath, Adv.

...for the plaintiff

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

The plaintiff had initially filed an application being PLA/218/2019 for grant of probate of the last Will and Testament of the testatrix Bhagirathi Devi Maskara dated 12th March, 2015. The testatrix died on 6th January, 2018 leaving behind five legal heirs, i.e. three sons and two daughters. After the death of the testatrix, the petitioner has filed the PLA for grant of probate.

One of the legal heirs, namely, Rajendra Prasad Maskara, being the son of the testatrix, has filed the caveat and affidavit in support of caveat and other three legal heirs, namely, Dilip Kumar Maskara, Smt. Sashiprabha Agarwal and Smt. Kusumlata Musaddi have neither filed their consent nor have filed their caveat or affidavit in support of their caveat. One of the legal heirs, namely, Pawan Kumar Maskara, has filed the consent for grant of probate.

As there was a caveat and affidavit in support of caveat on behalf of Rajendra Prasad Maskara, accordingly, PLA/218/2019 is converted as TS/6/2020.

Since one of the caveators has filed affidavit in support of the caveat, accordingly, issues were framed but subsequently the caveator/defendant has informed the learned advocate appearing for the defendant by a communication dated 26th August, 2023 that the caveator/defendant decided not to pursue the instant suit against the plaintiff and on the basis of the said communication, the suit is proceeded as undefended suit.

The plaintiff has examined one witness, namely, Nupur Rathi, who is one of the attesting witnesses of the Will as well as draftsman of the said Will. During her evidence, the said witness has stated that the testatrix has executed her last Will and Testament in her presence on 12th March, 2015. She has also stated that the testatrix has executed the said Will at her residence in presence of the witnesses as well as her son Pawan Kumar Maskara, his wife and another witness, namely, Sunil Kumar Agarwal. The said witness has identified the said Will as well as the signature of the testatrix and accordingly the Will was marked as Exhibit-A and the signatures of the executrix were marked as Exhibit-A/1, A/2 and A/3 and the signature of the witness was marked as Exhibit-A/4. The witness further stated that the executrix has executed the Will while possessing good health and fit state of mind.

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

Considered the submission made by the counsel for the plaintiff.

Perused the original Will wherein the testatrix has appointed the petitioner as executor of her last Will and Testament in presence of the witnesses. The death certificate shows that the executrix died on 6th January, 2018.

Considered the evidence of the attesting witness who is also the draftsman of the Will, this Court is satisfied that the plaintiff has proved the Will and is entitled to get the probate.

In view of the above, prayer (c) of the probate application is allowed subject to completion of all formalities.

The department is directed to issue probate after completion of all formalities and at the time of grant of probate, a copy of the Will be made as part of the probate.

TS/6/2020 is thus disposed of.

(KRISHNA RAO, J.)