

IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY & INTESTATE JURISDICTION

PLA/125/2023

IN THE GOODS OF :
SMT. AMIYA PAL, DECEASED

BEFORE:

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date: 4th October, 2024.

Mr. Rupak Ghosh, Mr. S. Abedin, Mrs. Chitra Abedin, Ms.
Pooja Singh, Advocates for the petitioner.

The Court : This is an application for grant of probate of the last registered Will and Testament of Smt. Amiya Pal dated 18th May, 2013.

The deceased, a Hindu governed by Dayabhaga School of Hindu Law died on 14th December, 2014 at West Bank Health & Wellness Institute. The deceased at the time of death resided at E-2, Block No.1, 50/A, College Road, Post Office – Botanical Garden, Police Station – Shibpur, Howrah. The deceased at the time of death had two sons and two daughters, namely, (i) Prosanta Kumar Pal (ii) Chitra Seal (iii) Probhat Kumar Pal and iv) Gita Dhar, since deceased. All the legal heirs, namely, Prosanta Kumar Pal (elder son) and Chitra Seal (daughter) have given no objection to the grant of probate of the last Will and Testament of the testatrix in favour of the petitioner, who is the younger son of the testatrix.

It is the case of the petitioner that the original Will and Testament dated 18th May, 2013 could not be traced out. In such circumstances, by order dated 25th January, 2024 the Will of the testatrix was directed to be

proved in solemn form. The petitioner in compliance thereof has examined one of the attesting witnesses, namely, Arun Kumar Kundu and himself also. The petitioner has prayed for grant of probate by treating the certified copy of the registered Will and Testament as original.

Mr. Rupak Ghosh, learned Advocate for the petitioner submits that the original registered Will and Testament of the testatrix was lying with the elder son i.e. Prosanta Kumar Pal who has already endorsed his 'no objection' to the grant of probate in favour of the petitioner. Referring to Section 237 of the Indian Succession Act he submits that the probate of the Will can be granted in respect of the certified copy of the registered Will treating the same as original till the original is traced out. He further indicates that the legal heirs of the testatrix have already given their no objection and the attesting witness Mr. Arun Kumar Kundu has proved the execution of the registered Will. He submits for issuance of grant of probate and seeks for order in terms of prayers (a) and (b) of the petition.

Upon going through the evidence of PW-1 Arun Kumar Kundu who is one of the attesting witnesses it appears that he has identified the signature of the testatrix as well as the signature of the other attesting witness, namely, Prosanta Kumar Pal in the certified copy of the Will. The witness has also deposed that at the time of execution of the Will the testatrix was in sound health and mind.

In view of the above, let there be an order in terms of prayers (a) and (b) of the petition.

The petitioner is directed to furnish undertaking to produce the original registered Will and Testament dated 18th May, 2013 of the testatrix as and when the same is available.

The petition stands disposed of.

(BIVAS PATTANAYAK, J.)

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