

OD-9

ORDER SHEET

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

PLA/320/2022
IA NO: GA/1/2023

IN THE GOODS OF BISWANATH SARKAR (DEC)

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : December 09, 2024.

Appearance :

Mr. Anirban Pramanick, Adv.

Mr. Punarbasu Nath, Adv.

Mr. Pajarshi Kundu, Adv.

Ms. Bhagyasree Dey, Adv.

... for the petitioner

The Court: Mr. Anirban Pramanick, learned Advocate, is appearing for the petitioner.

The petitioner filed the present application praying for grant of probate of the last Will and Testament dated 13th December, 1999, executed by the testator Biswanath Sarkar.

Counsel for the petitioner submits that the testator has executed his last Will and Testament by appointing his son as an executor. The testator died on 12th April, 2013. He submits that the wife of the testator was pre-deceased to the testator, who died on 10th of November, 1989. The testator died leaving behind two legal heirs i.e., one son, the petitioner, herein and one daughter Mithu Saha.

Counsel for the petitioner submits that as the daughter has not come forward either for giving consent or by filing caveat or affidavit in support of caveat. Accordingly, citations were issued in spite of issuance of citation the daughter has not come forward to file any caveat. The department has submitted no caveat certificate after issuances of citations.

Counsel for the petitioner submits that though the Will was executed in presence of three attesting witnesses, out of three attesting witnesses, one of the attesting witness namely, Debasis Ghosh has filed his affidavit stating that the executor has executed his last Will and Testament in his presence and presence of other attesting witnesses by appointing the petitioner as his executor while possessing good health and fit state of mind. He submits that the petitioner has proved the Will and he is entitled to get the probate.

Heard the learned Counsel for the petitioner. Perused the original Will, death certificate of the testator, death certificate of the wife of the testator, no caveat certificate submitted by the department, affidavit of the attesting witness. This Court finds that the attesting witness in his affidavit has categorically mentioned that the testator has executed his last Will and Testament in presence of the three witnesses by appointing the petitioner, as executor while possessing good health and fit statement of mind.

Considering the above, this court finds that though the citations were issued but the daughter has not come forward for giving consent or for filing caveat. Accordingly, this Court finds that the petitioner has proved her will and is entitled to get probate.

The department is directed to grant probate to the petitioner of the last Will and Testament dated 13th of December, 1999, after completion of all formalities. At the time of grant of probate, copy of the Will be made part of the probate.

PLA/320/2022 is disposed of.

Counsel for the petitioner submits that GA No.1 of 2023 has already been disposed of by an order dated 16th March, 2023, accordingly, GA No.1 of 2023 be treated as disposed of.

(KRISHNA RAO, J.)

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