

05.12.2025.
Court No.13
Item No. 22
ap

F.A. 315 of 2011

**Mallikya Sinha Roy @ Mallika Sinha Roy
Versus
Samir Kumar Deb**

Ms. Madhumita Patra,
Mr. Swapan Chakraborty.

...For the appellant.

Ms. Adrita Dey.

...For the respondent.

1. This first appeal is directed against the judgment and order granting Probate dated 28th April, 2011 passed by the learned Chief Judge, City Civil Court at Calcutta in O.C. No. 12 of 2010.

2. The brief facts relevant to the present case are that the appellant, Mallikya Sinha Roy objected to the grant of Probate of the last Will and Testament dated 12th January, 2000 of her mother, Kalpana Rani Deb in favour of the propounder Dr. Samir Kumar Deb.

3. The Trial Court found that bequest under the Will was made entirely in favour of Samir Kumar Deb excluding the daughter Mallikya Sinha Roy. The ground taken for challenging the Will and the alleged suspicious circumstances surrounding the same urged by the appellant was, inter alia, as follows:

(a) The testatrix, Kalpana Rani Deb did not reside at premises No. 49A, Surya Sen Street, Police Station – Amherst Street, Kolkata – 700 009 where the Will was allegedly executed. She was residing in Madhyamgram with the appellant.

(b) She was suffering from paralysis from September, 1999. She also suffering from depression and was bed ridden and was in no physical or mental capacity to execute the Will.

(c) The Will was manufactured and a forged document. The relationship between the executrix and the propounder beneficiary were acrimonious. Reference was made to several letters of the executrix in that regard.

4. Before the Trial Court the Will was proved by one of the attesting witnesses, namely, Rubi Pal Chowdhury (PW-2). PW-1 was the propounder Samir Kumar Deb himself. The other witness to the Will, Mr. S.P. Roy, a learned Advocate, who had drafted the Will on the instructions of the executrix, in fact filed the Probate case for the propounder.

5. It would be relevant to mention that the propounder had earlier filed a Probate Case being Probate Case No. 101 of 2002 of the said Will of the Testatrix dated 12th January, 2000, which was allowed by an order dated 14th January, 2005. On an application for revocation being Misc. (Revocation) Case No. 2608 of 2008, the Probate granted by an order dated 14th January, 2005 was revoked on 30th May, 2009 on the ground that the objector was not cited.

6. The impugned judgment was passed in the aforesaid O.C. Case No. 12 of 2010 being a fresh

proceeding for grant of probate. The Trial Judge found that the basic requirement of the Succession Act, 1925 for proving a Will has been duly discharged by the respondent propounder. One of the attesting witnesses, namely, Rubi Pal Chowdhury (PW 2) had herself deposed and proved the signature of the testatrix. She had also deposed that the testatrix was of sound mind and had full testamentary capacity to execute the Will.

7. It was further found by the Trial Court that none of the allegations of the objector as regards the paralysis of the executor, the absence of a testamentary capacity or unfitness of the executor's mental and physical capacity have at all been proved by any oral or documentary evidence by the objector.

8. The Trial Judge further found that the alleged animosity between the executor and the propounder son was also baseless since none of the letters relied upon by the objector were produced in evidence before the Court.

9. The Trial Judge also found that the voter's identity card, ration card clearly demonstrated that she was residing at the place of execution of the Will, namely, Surya Sen Street, Police Station – Amherst Street, Kolkata – 700 009. The propounder was further able to prove before the Trial Court that the executrix was herself present at the time of registration of the Will.

10. The absence of the second witness to the Will being S.P. Roy, learned Advocate, who drafted the Will on the instructions of the executrix was not found fatal. The reason therefor was that S.P. Roy has himself had filed the application for Probate. The Trial Court further found from Exhibits 8 to 10 that even the identity card issued by the Post and Telegraph Department in the year 1999 indicated that the address of the testatrix was Surya Sen Street, Police Station – Amherst Street, Kolkata – 700 009.

11. The Trial Court therefore rightly observed that a testamentary document is executed to exclude certain persons, who would have been the natural legal heirs of the estate of the deceased. The Trial Court rightly found that there was no suspicious circumstance surrounding the execution of the Will.

12. In the backdrop of the above, the Trial Court has rightly disbelieved the objection raised by the appellant/daughter, namely, Mallikya Sinha Roy.

13. Having regard to the above discussions, this Court is of the view that the impugned judgment and order dated 28th April, 2011 passed by the learned Chief Judge, City Civil Court at Calcutta in O.C. No. 12 of 2010 calls for absolutely no interference.

14. F.A. 315 of 2011 fails and shall stand dismissed.

15. Interim order, if any, shall stand vacated.

16. There will be no order as to costs.

17. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)