

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

F.A.T. 18 of 2023

Pratima Guha

vs.

Mohan Ghosh & Ors.

With

CAN 3 of 2025

For the Appellant

: Mr. Pritam Roy, Adv.

Ms. Silpi Basu, Adv.

For the Respondent

: Mr. Bhaskar Roy Mahasaya, Adv.

Ms. Ambalika Ghosh, Adv.

Ms. Taniya Bhowmik, Adv.

Heard & Judgment on

: November 17, 2025

Md. Shabbar Rashidi, J.:-

1. CAN 3 of 2025 is an application seeking to introduce the additional evidence.
2. By filing the instant application the appellant has sought to introduce certain documents as additional evidence more specifically a copy of the

deed of gift dated February 19, 1988 in order to establish that the signature appearing on the purported Will is not that of the testator.

3. A perusal of the materials place before us including the copy of the order-sheet in OC No. 7 of 2017, it transpires that the aforesaid proceeding was fixed before the learned Trial Court on several dates and the appellant chose not to contest such proceeding. In that view of the facts, we are not in a position to arrive at a conclusion that the appellant could not produce such document before learned Trial Court inspite of due diligence. The appellant has not been able to establish that the appellant produced such documents before the learned Trial Court and such Court refused to admit the evidence or such evidence was not within the knowledge of the appellant and it could not be produced before learned Trial Court inspite of exercising due diligence.
4. In such circumstances, we are not minded to allow the prayer under Order XLI Rule 27 of the Code of Criminal Procedure, so filed on behalf of the appellant.
5. CAN 3 of 2025 is, accordingly, dismissed.
6. Appeal is directed against a judgment and order passed on May 12, 2023 in connection with O.C. No. 7 of 2017.

7. By the impugned judgment and order, a suit being O.C. No. 7 of 2017 filed on behalf of the private respondent was allowed granting probate to the last Will dated July 28, 1989 executed by late Pabitra Chandra Ghosh.
8. It is submitted on behalf of the learned advocate for the appellant that testator was not medically competent to execute the Will. The Will which was probated by the impugned judgment and order was not a genuine Will executed by late Pabitra Chandra Ghosh. The testator was not medically fit or mentally alert to execute the alleged Will dated April 28, 1989.
9. It is also submitted on behalf of the learned advocate for the appellant that the probate proceeding was initiated following partition suits amongst the co-sharerers in respect of the property involved in the Will.
10. Learned advocate for the appellant also submits that the appellant happens to be legal heir of the testator.
11. Learned advocate for the appellant also submits that the appellant being a legal heir of the testator was denied fair chance to contest the probate proceeding. She was not allowed to cross examine the witnesses examined on behalf of the private respondent.
12. The private respondent filed a probate proceeding in respect of the last Will and Testament of late Pabitra Chandra Ghosh. It was registered as

O.C. No. 7 of 2017. The appellant being defendant in such proceeding appeared in the suit and filed written statement. On the basis of pleadings put in on behalf of the parties, issues were framed in the proceeding. The matter was fixed for evidence on behalf of the plaintiff/private respondent.

13. On perusal of the impugned judgment and order, it transpires that although the appellant took out a defence that the testator was not physically fit and mentally alert to execute the alleged Will in favour of the private respondent, nevertheless from the evidence discussed in the impugned judgment and order, no efforts were taken by the appellant to justify her claim. On the contrary, it transpires from the copy of the order sheet of O.C. 7 of 2017 annexed herein, that the case was fixed for evidence on February 2, 2023. One witness was present in Court. On such date, an adjournment petition was filed on behalf of the appellant/defendant. The learned Court waited for the appellant to take proper steps until 2.30 p.m. and thereafter proceeded to record the evidence of the witness, namely Gopal Chandra Bose. He had to be discharged after recording his evidence as nobody turned on behalf of the appellant to cross examine the witness. On the following date, i.e. on March 15, 2023, the appellant/opposite party again came with an adjournment application. On that very day, the adjournment petition filed by the appellant/opposite

party was not even moved on her behalf. On such date, the evidence on behalf of the private respondent /plaintiff was closed on his prayer and the suit was fixed for hearing arguments.

14. The materials on record also show that the case was fixed on several dates thereafter for hearing arguments, i.e. on April 1, 2023, April 5, 2023 and April 18, 2023 and finally the case was disposed of by a judgment and order dated May 12, 2023. There is nothing on record to show that the present appellant/opposite party took any steps thereafter on such dates fixed in the suit seeking to continue with the hearing of the case, to cross examine the witnesses examined on behalf of the appellant and to adduce evidence on their behalf.
15. No endeavour was undertaken by the applicant to prove her case made out in the probate proceeding to the effect that the testator was reeling under medical conditions which rendered him incapable of executing a Will.
16. In course of his submissions, learned Advocate appearing for the appellant has contended that, the advocate who represented the appellant before the Trial Court, did not inform the appellant as to the progress of the probate proceedings, Appellant had been kept in the dark about the probate

proceedings, by the advocate engaged by the appellant before the learned Trial Court.

17. We have given anxious consideration to such contentions of the appellant.

The appellant, has not pleaded anything with regard thereto in the stay petition. Appellant has not taken any ground in the memorandum of appeal with regard to the conduct of her advocate-on-record. The stay petition as well as the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 does not have any materials to support such contentions.

18. Appellant has not proceeded against her advocate representing her before the Trial Court, assuming that, such learned advocate had misconducted the proceedings. Appellant has not lodged any complaint with the Bar Council as against such advocate. It is for a litigant to keep itself acquainted with the proceedings of the Court.

19. We have noted the number of days when, the appellant did not appear before the learned Trial Court. We have also noted that learned Trial Judge allowed the appellant sufficient time to defend herself. Appellant has not offered any explanation as to why the appellant went unrepresented on various dates before the learned Trial Judge.

20. In such circumstances, we find no merit in the present appeal.

21. F.A.T. 18 of 2023 and the connected application being CAN 3 of 2025 are dismissed without any order as to costs.

(Md. Shabbar Rashidi, J.)

22. I agree

S.D.

(Debangsu Basak, J.)