

**IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY AND INTESTATE JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

TS/13/2015

IN THE GOODS OF:

NANDA RANI DEBI NANDA RANI BHATTACHARJEE

For the Plaintiff : Ms. Sulagna Mukherjee, Adv.
Ms. Sujatna Mukherjee, Adv.

Hearing concluded on : 01/07/2025

Judgment on : 07/07/2025

Sugato Majumdar, J.:

This is an application praying for grant of probate of the last will and testament of the deceased Nanda Rani Debi alias Nanda Rani Bhattacharjee, the Testatrix herein.

The Testatrix was a Hindu, governed by the Dayabhaga School of Law, and breathed her last on 21/03/2011 at Kalna Sub-Divisional Hospital, District-Purba Burdwan. Her last place of abode was Village-Kalna Kansari Para, Post Office & Police Station-Kalna, District-Burdwan. Prior to her death, the deceased/Testatrix executed her last will and testament on 24/02/2000. The will was executed in Bengali language and attested by two witnesses. The will was registered. After her death the original will was not traceable. Since, the will was registered, a certified copy of this will was obtained from the concerned office of the Sub-Registrar and was placed before this Court along with the probate application.

General and special citations were issued. Caveat was filed on behalf of Smt. Nilima Ghosal through her constituted attorney. Affidavit in support of caveat had also been filed. Since the probate proceeding became contentious, it was converted into a contentious cause and renumbered.

It is stated in the Affidavit support in the caveat that the Testatrix had two daughters, younger being the Caveatrix. The Caveatrix used to live with her mother and used to take care of her. Since the Testatrix had no money, the Caveatrix had to purchase a property at Kalna on 5th December, 1995 out of her own fund. The Caveatrix and the Testatrix lived in joint mess. All expenses of the Testatrix including food and medical expenses were borne by the Caveatrix. Nitish Kumar Roy one of the consentee of the application is a mentally handicapped person. According to the Caveatrix ruled out execution as well as registration of the will. According to the Caveatrix, the will is a forged and manufactured document.

At subsequent stage, the Caveatrix did not appear to adduce any evidence.

PW 1 is the Executor appointed under the will and he produced the death certificate in original which was marked. According to him, the original will could not be traced as a result of which certified copy of the will was obtained from the office of the concerned Sub-Registrar. PW 2 is the attesting witness who proved due execution of the will. He stated that Testatrix was physically fit and mentally alert at the time of execution of the will. She was 70 years old at the time of the execution of the will and went to the residence of the learned lawyer to execute the will. Since the Caveatrix did not contest the matter in the subsequent stages the witnesses were not cross-examined and testimonies remain unchallenged.

Testimony of the attesting witness in PW 2 did not raise any suspicion surrounding the execution of the will. In fact, there was no plea in the written

statement that the execution of the will was surrounded by suspicious circumstances. More so, the will was registered one.

The Caveatrix raised the plea as defence that the will is forged as well as manufactured one. Burden of proof lies on her to prove the contention. Since no evidence was adduced by the Caveatrix allegations of forgery and manufacturing was not proved.

On appreciation of evidence, this Court is of opinion that due execution of the will by the Testatrix under Section 63 of the Indian Succession Act, 1925 has been proved.

The Original will is lost. Section 237 is, therefore, relevant to consider. Section 237 states that,

“237. Probate of copy or draft of lost will.—When a will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced.”

Since the execution of the will is duly proved and authenticated/certified copy of the will is produced, let the probate of the last will and testament of the Testatrix Nanda Rani Debi alias Nanda Rani Bhattacharjee dated 24/02/2000 (11 Falgun 1406 BS) be granted for a limited period till the original is found.

Department is directed to do the needful.

Inventory and account shall be submitted within the statutory period.

The instant Testamentary Suit stands disposed of accordingly.

(Sugato Majumdar, J.)