

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY & INTESTATE JURISDICTION
ORIGINAL SIDE

TS/26/2016

IN THE GOODS OF : GIRISH CHANDRA JANA (DEC)
-AND-
VS
BISHAD KUMAR JANA -VS- SMT. SWAPNA HALDER
(JANA) AND ORS.

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 13th November, 2025

Appearance:
Mr. Amitave Mukherjee, Sr. Adv.
Ms. M. Dey Roy, Adv.
....for the Plaintiff.
Mr. Anirban Bose, Adv.
Mr. Jit Ray, Adv.
Mr. Satyajit Senapati, Adv.
Ms. Atreyee Senapati, Adv.
....for the Defendant.

The Court: This is a suit, praying for grant of probate of the last will and testament dated 5th December, 1964 of the Testator.

The Testator Girish Chandra Jana was a Hindu and was a resident and had been residing in the District of Medinipur. He expired on 5th November, 1971, prior to which his last will and testament was executed on 5th December, 1964. Two sons of the Testator Bishad Kumar Jana and Bijoy Krishna Jana were appointed of Joint Executors. Bishad Kumar Jana being one of the Executors filed the instant petition, praying for grant of probate.

Citations were issued.

Caveat as well as affidavit-in-support of caveat was filed by the near relative being the grandson of the Testator. The affidavit was accepted and the probate proceeding became contentious, hence renumbered. The affidavit was treated as written statement.

Various grounds were taken in the written statement challenging the will.

The Executor was examined as PW-1. The Executor identified the will which was signed by two attesting witnesses. The Executor was also present, as deposed, at the time of execution of the will. But the testimony of the Executor was not clear as to whether the attesting witnesses were dead. In any way, no attesting witness was examined. In absence of anything else, this will is to be proved in accordance with Section 67 in default Section 68, 69 and 71 of the Indian Evidence Act, 1872. When there is no evidence that the attesting witnesses were dead or not found, it is to be proved by one of the attesting witnesses. The will was not exhibited as attesting witnesses or any one of the attesting witnesses deposed. There is no attempt to prove otherwise. Therefore, due execution of the will in terms of Section 63 of the Indian Succession Act, 1925 has not been proved. The Learned Counsel for the Defendant relied upon two decisions of the Supreme Court of India but those were decided in respect of their own facts and circumstances. The ratio is not applicable herein.

On perusal of evidence adduce, this Court comes to the conclusion that the will is not proved.

Accordingly, the suit stands dismissed on merit.

(SUGATO MAJUMDAR, J.)