

OD-1

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Ordinary Original Civil Jurisdiction

PLA/20/2011

IN THE GOODS OF SAILENDRA NATH BOSE @ SAILENDRA
NATH BASU (DECEASED)

Before:

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 13th JUNE, 2025

Appearan
Mr. Kaushik
Pradhan, Adv.
...for the petitioner

The Court: This is an application under the Indian Succession Act 1925 filed by the petitioner for grant of probate with Copy of the Last Will and Testament of the deceased Sailendra Nath Basu.

The contention of the petitioner in the application for grant of probate may be summed up thus:

1. Sri Sailendra Nath Bose alias Sailendra Nath Basu since deceased was last residing at D-55 Bangur Avenue Kolkata – 700055. Sri Sailendra Nath Bose was a Hindu inhabitant and citizen of India governed under Dayabhaga School of Hindu Law and a person subject to provisions of Indian Succession Act (Act XXXIX of 1925 as amended upto date.)
2. Sri Sailendra Nath Basu died on 18th March 2009 after having duly made and published his Last Will and Testament dated 10th June 2002 whereby he appointed the petitioner Sri Susanta Kumar Mali Son of Late Haripada Mali, permanent resident of Padmaput Post Office – Nayaput police Station – Contai District Purba Medinipore as Executor of the said Will.
3. The said will was prepared by Kaushik Kanti Maiti Learned Advocate at the instruction of the said deceased and typed out then at 12 old post office

street Kolkata – 700001. The said deceased had executed the said Last Will in presence of two persons namely Sadhab Chandra Maity, and Sri Gauranga Mali, Thereafter the said two persons Sadhab Chandra Maity and Sri Gauranga Mali in the presence of said Sri Sailendra Nath Bose alias Sailendra Nath Basu and at the request of testator and in the presence of each other subscribed their respective names to the said will as witnesses.

4. Amongst the two attesting witnesses Sadhab Chandra Maity has affirmed affidavit an 19-01-2011 as attesting witness and gone declaration. The petition for probate is also verified by Sadhab Chandra Maity being one of the two attesting witnesses of the will.
5. The deceased had his permanent place of abode at D-55. Bangur Avenue, Kolkata – 700,055. He died leaving his Last Will and testament dated 10th June 2002 in the house lying and situated at the land and property being plot No. 263, N-2 Sector, Digha Development Scheme, Post Office and Police Station Digha, District Purba Medinipore which is under the Will and bequeathed in favour of the petitioner and within the testamentary jurisdiction of this Court and also outside the said jurisdiction of this Court in India to be administered into.
6. By virtue of the said Last Will and Testament dated 10th June 2002 the petitioner is the sole beneficiary and legatee of Estate of deceased particular being stated in the Affidavit of assets.
7. The value of the said Estate of the deceased does not exceed a sum of Rs. 100,000/-. Therefore the net value of the asset is Rs. 100,000/-.
8. That by executing and publishing the said Will the deceased had transferred his leasehold rights in respect of the Plot No. 263, N-2 Sector, Digha Development Scheme, Post Office and Police Station – Digha, District – Purba Medinipore in favour of the petitioner.

9. That so far the petitioner has been able to ascertain and is aware of the properties are mentioned in affidavit of assets, and the petitioner undertakes that in the event any other properties and effects comes to the hand of the petitioner additional Court fees if payable will be paid.
10. That no intimation is received by this Court or any District Court about grant of Probate and to the best of the Petitioner's knowledge and belief no application has been made to any other Court for grant of probate or Letters of Administration.
11. That the wife of the deceased died long before the death of the deceased. The deceased abovenamed left surviving his three sons namely Jayante Basu, Subrata Basu, and Susanta Basu, and one Daughter Supriya Ghosh who have though verbally consented and told the petitioner that they do not have any objection to the grant of probate in respect of the said Will to the petitioner but refused to take botheration of coming before the Court to affirm affidavit of consent on their part.
12. That had the deceased died without leaving will the Estate under the Will of the deceased would have devolved upon the following legal heirs and representatives of the deceased and no one else as per Hindu Succession Act 1956.

Name	Relationship with deceased	Address
1. Jayanta Basu	Son	D-55. Bangur Avenue. Kolkata-700055.
2. Subrata Basu	Son	D-55. Bangur Avenue, Kolkata'- 700055.
3. Susanta Bose	Son	D-55 Bangur Avenue Kolkata-700055.

4. Supriya Ghosh	Daughter	D-55 Bangur Avenue Kolkata-700055.
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13. That inasmuch as the Estate Duty has since been abolished the estate duty in respect of the deceased's estate is not payable and as such the petitioner has not applied for any estate duty clearance certificate in respect of the property of the deceased.

14. The beneficiary of the said Will is Sri Susanta Kumar Mali and desirous of obtaining probate of the said Will of the deceased abovenamed dated 10th June 2002 as Sole Executor of the said Will throughout state of West Bengal.

Pursuant to the filing of this application by Order dated 1-12-2011 there was direction to issue General Citation and Special Citation.

As no caveat was filed the case was taken up for evidence. The petitioner has examined one witness P.W.-1- Kausik Pradhan.

Before deciding to grant probate it is necessary to consider Section 59, and Section 63 of the Indian Succession Act 1925 and Section 68 of The Evidence Act.

Section 59 of the Indian Succession Act 1925 provides as follows:

Section 59-Person capable of making wills. Every person of sound mind not being a minor may dispose of his property by will.

Explanation – 1 A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2- Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3 – A person who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation – 4 No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from other cause that he does not

know what he is doing.

Section 63 of the Indian Succession Act 1925 provides as follows:

S.63: Execution of unprivileged wills-Every testator not being a Soldier employed in an expedition or engaged in actual warfare [or an airman so employed or engaged or a mariner at sea shall execute his will according to the following rules;

a) The testator shall sign as shall affix his mark to the will or it shall be signed by some other person in his presence and by his direction.

b) The signature or mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

c) The will shall be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will in the presence and by the direction of the testator or has received from the testator a personal acknowledgement of his signature or mark or of the signature of such other person and each of the witnesses shall sign the will in the presence of the testator but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary.

Section 68 of Evidence Act provides as follows:

Section 68. proof of execution of document required by law to be attested – If a document is required by law to be attested it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document not being a will which has been registered in accordance with the provision of the Indian Registration Act 1908 unless its execution by the person by who it purports to have been executed is specifically

denied.

Upon perusing the Will it appears that the signature of the testator Sailendra Nath Basu is there on the Will. It is also attested by two witnesses who have given endorsement to that effect that the testator in their presence read over and signed the will and the attesting witnesses after signature of the testator and in his presence gave their signatures as attesting witnesses. Thus the Will is executed in accordance with Indian Succession Act 1925.

Now in order to ascertain as to whether the Will is proved in accordance with the Indian Evidence Act 1872 and whether the testator was capable of making will it is necessary to consider the evidence of P.W. 1.

P.W. 1 Sadhab Chandra Maity in his examination in chief has stated that he knows Sailendra Nath Bose. He stated that he executed a Will during his life time. He further identified the Will executed by Sailendra Nath Bose. P.W. 1 also identified his own signature in the will and the signature of the other attesting witness namely Gauranga Mali. Thus the Execution of Will by Sailendra Nath Basu is proved in accordance with Section 68 of Indian Evidence Act 1872.

Now the point for consideration is the capability of Sailendra Nath Basu the testator herein under Section 59 of the Indian Succession Act 1925.

P.W. 1 in his examination in Chief has stated that the mental condition of the testator was very good. There is nothing on record to suggest that there was undue influence or coercion as fraud. Thus it can be concluded that the testator had the capability as provided under Section 59 of the Indian Succession Act 1959.

Hence the petitioner/Executor has been able to make out a case for grant of probate. Thus there will be an order in terms of prayer (c) of the petition. Thus probate with copy of the Last Will and Testament of the deceased Sri Sailendra Nath Bose alias Sri Sailendra Nath Basu dated 10th June 2002 be granted to the petitioner with effect throughout the state of West Bengal. The Department to ISSUE probate

upon payment of requisite Court fees.

(BISWAROOP CHOWDHURY, J.)

A.Bhar (P.A.).