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

Present:
The Hon'ble Justice Sugato Majumdar

TS/22/2017
IA NO: GA/2/2017 (Old No: GA/3190/2017), GA/3/2017 (Old No: GA/3759/2017), GA/5/2018 (Old No: GA/104/2018), GA/7/2021, GA/9/2024

IN THE GOODS OF: PRANATI GHOSAL, DECEASED –AND

VS

NIRMALYA KUMAR GHOSAL -VS- PRAKRITI MALHOTRA

For the Plaintiff	:	Mr. Reetobroto Kumar Mitra, Sr. Adv. Mr. Rudrajit Sarkar, Adv. Mr. Debangshu Dinda, Adv.
For the Defendant	:	Mr. Soumabho Ghosh, Adv. Ms. Ashika Daga, Adv. Ms. Shreya Basu, Adv.
Hearing concluded on	:	06/02/2025
Judgment on	**:**	**19/02/2025**

Sugato Majumdar, J.:

The instant application is filed by one Nirmalaya Kumar Ghosal praying for grant of probate of the last will and testament dated 23rd February, 2014, of the Testatrix Pranati Ghosal, since deceased.

Late Pranati Ghosal, since deceased, had last place of abode, at the time of death was at 3, Sunny Park, Kolkata-700019 in the State of West Bengal. She breathed her last in the same address on 11/09/2016. She left the instant will being her last will and testament dated 23rd February, 2014. The Petitioner was appointed as an executor. The original application was filed praying for grant of probate. Citations were issued both general and specific.

Miss. Prakity Malhotra, daughter of the Testatrix, filed caveat supported by affidavit. The caveat was allowed and the probate proceeding, on becoming contentious, was renumbered as TS 22 of 2017. Affidavits in support of caveat were treated as the written statement.

It is contended in the affidavit that the Testatrix always intended that assets would be distributed equally among her children. The Testatrix was in total control of her affairs and house till her health started failing in summer of 2014. Since April 2015, brother of the Caveatrix and the sister-in-law had taken over control of the affairs house the Testatrix completely depended on them. The Testatrix was given anti-depression medication and was ill-treated. In February 2016, the Testatrix was admitted in hospital. When the Caveatrix, usually staying in U.K., came to visit her mother, she expressed that her assets should be distributed equally among the Petitioner and the Caveatrix. Subsequent to death of the mother the Caveatrix came to know of the instant will.

It is contended in the written statement by the Caveatrix that apparently, the will was printed on a fresh plain paper which is unusual for making a will; it is further contended that the will is a manufacture document made after death of the mother, previously procuring the signature of the Testatrix in a blank paper prior to her death. In nutshell, it is stated that the will is a forged document. It is further stated that there was no signature of the maternal uncle being a bar-at-law, any advocate or doctor in the will. According to the Caveatrix, the disposition of the property through the instant will is unnatural and the execution of the will was surrounded by suspicious circumstances. It is further contended that affidavit of assets is erroneous various antic items were suppressed. It is contended that the probate should not be granted to the will.

As a subsequent stage of the suit, the caveat was withdrawn. Till then the witness of the Plaintiffs, namely, the attesting witness was extensively cross-examined.

Will is produced. The attesting witness identified the signatures of the Testatrix in the will as her signatures. It is stated in examination- in- chief that the Testatrix signed the will in presence of the attesting witnesses and they also put their signatures at the time of execution of the will by the Testatrix in her presence. It was also stated by the attesting witness that at the time of the execution of the will r physical and mental condition of the Testatrix was good. She further stated that Testatrix was her husband friend's wife as well as her friend too. It is also in her oral testimony that the Executor was not present at the time of the execution of the will. Suggestion was given in course of cross-examination that signature of the Testatrix is in the odd place and also suggested that signature of the Testatrix was obtained on a blank document. All the suggestions were denied. Rather in course of cross-examination, the attesting witness affirmed that the Testatrix signed first on the will followed by the attesting witness herself, followed by the other attesting witness. It was also suggested in course of cross-examination that typed contents of the will were incorporated after death of the Testatrix that was denied.

Mr. Mitra, the Learned Senior Counsel appearing for the Petitioner/Plaintiff, argued that the execution of the will is properly proved by the attesting witness. Since the caveat was withdrawn. Nothing remained to oppose the grant of probate. According to him, probate should be granted.

In this case, caveat was withdrawn subsequent to witness action. The will was challenged as a manufactured one.

It is well settled proposition of law that burden of proof that the will is a manufactured one, is on the party who alleges so. In **H. Venkatachala Iyengar v. B.N. Thimmajamma (AIR 1959 SC 443)**, three Judges' Bench of the Supreme Court of India laid down the principle in the following words:

> "It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."

In **Rani Purnima Debi & Anr. Vs. Kumar Khagendra Narayan Deb & Anr. (AIR 1962 SCC 567)**, four Judges' Bench of the Supreme Court of India succinctly clarified this:

> "The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court."

Except challenging the testimony of the attesting witness in cross examination, which was denied and refuted by the later, no evidence was adduced to establish that the will is manufactured one. Therefore, it can safely be concluded that the Defendant failed to discharge the burden of proof that the will is a manufactured one. Accordingly, the plea is not proved.

The attesting witness properly proved the will as well as its execution in their presence. The Testatrix was physically fit and mentally alert as deposed. Although suggestions were given in cross examination, no evidence was adduced to the effect by the Defendant to show that the Testatrix was neither mentally alert nor physically fit at the time of execution of the will. Therefore, the evidence of the attesting witness stands and it is established that the Testatrix was physically fit and mentally alert at the time of execution of will.

It is stated by the attesting witness that the attesting witnesses were family friends of the Testatrix; they were not unknown to the Testatrix. It is rather the Testatrix who called them to sign the will as the attesting witness. Disposition of properties through will is also not unnatural. Therefore, evidence adduced, do not create any doubt of cloud surrounding the execution of the will.

In view of this discussions made above and on appreciation of evidence, this Court is of considered opinion that the probate of the last will and testament of the Testatrix late Pranati Ghosal dated 23/02/2014 is duly proved.

Let probate be granted as prayed for.

Accounts and inventory shall be filed within six months in accordance with section 317 of the Indian Succession Act, 1925.

(Sugato Majumdar, J.)