

ORDER SHEET

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

PLA/215/2021

IN THE GOODS OF:
SWADESH CHANDRA KAR (DEC)

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date: January 8, 2025.

Appearance:
Ms. Suchishmita Chatterjee Ghosh, Adv.
Mr. Malay Kr. Seal, Adv.
...for the petitioner

The Court: Ms. Suchishmita Chatterjee Ghosh, learned counsel,
is appearing for the petitioner.

The petitioner has filed the present application for grant of Letters
of Administration of the last Will and Testament dated 1st June, 2010 of the
Testator Swadesh Chandra Kar.

Counsel for the petitioner submits that the testator had executed
his last Will and Testament in presence of two attesting witnesses, namely,
Sujit Kumar Kar and Gopal Chandra Banerjee while possessing good health
and fit state of mind.

Counsel for the petitioner submits that after filling of the present
application citations were issued but none has come forward to file any
objection for grant of probate and accordingly the department has
submitted no caveat certificate on 6th September, 2024, stating that as per
record no caveat has been entered against for grant of Letters of
Administration.

Counsel for the petitioner submits that though the testator has execute his last Will and Testament in presence of two attesting witnesses but both the attesting witnesses were not traceable and thus the petitioner failed to bring the said two attesting witnesses to prove the Will.

Counsel for the petitioner submits that, the petitioner has proved the said Will in solemn form by examining one witness, who is an attending witness, in whose presence the testator has executed his last Will and Testament in the presence of two attesting witnesses.

Counsel for the petitioner has drawn the attention of this Court to the evidence of the PW-1, namely, Arnab Guha, who is the attending witness of the Will, in which he has categorically stated that the testator Swadesh Chandra Kar had executed his last Will and Testament on 1st June 2010 while possessing good health and fit state of mind in presence of two attesting witnesses and the testator and both the attesting witnesses have signed the said Will in his presence and accordingly the Will was exhibited as Exhibit-A, signatures of the testator were marked as Exhibits-A/1, A/2, A/3 as well as the signatures of the attesting witnesses were marked as Exhibits-A/4 and A/5.

During the evidence of the attending witness, the affidavit filed by the attending witness was also marked as Exhibit-B and signature of the said witness as marked as Exhibit-B/1

Counsel for petitioner submits that the Testator Swadesh Chandra Kar died on 10th November, 2010 and the death certificate is also enclosed with the probate application.

Considered the submission made by the Counsel for the petitioner and perused the Original Will, Death Certificate, no caveat certificate and the evidence of the PW-1.

This Court finds that the PW-1 in his evidence has categorically stated that the testator had executed his last Will and Testament while possessing good health and fit state of mind in his presence and in presence of two attesting witnesses. Though the two attesting witnesses have been not been brought before this Court but it is the specific case of the petitioner that the two attesting witnesses are not traceable.

Accordingly, the petitioner has taken the recourse of section 69 of the Evidence Act and has examined the PW-1. Counsel for the petitioner has relied upon the judgment in the case of ***Babu Singh and Others Vs. Ram Sahai Alias Ram Singh reported in (2008), In SCC 754*** wherein the Hon'ble Supreme Court held that *"It would apply, inter alia, in a case where the attesting witness is either dead or out of the jurisdiction of the court or kept out of the way by the adverse party or cannot be traced despite diligent search. Only in that event, the will may be proved in the manner indicated in section 69 i.e. by examining witnesses who were able to prove the handwriting of the testator or executant. The burden of proof then may be shifted to others."*

Considering the above, this Court finds that the petitioner has proved the Will through the attending witness as the attending witness has categorically stated that the testator had executed his last Will and Testament in his presence and in presence of the attesting witnesses while possessing good health and fit state of mind.

Accordingly, the petitioner is entitled to get the Letters of Administration. The department is directed to issue Letters of Administration of the last Will and Testament dated 1st June, 2010 subject to furnishing of surety of 5 lacks with two sureties.

At the time of grant of Letters of Administration, the copy of Will be made as part of the Letters of Administration.

PLA/215/2021 is disposed of.

(KRISHNA RAO, J.)

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