

OD-31

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Testamentary and Intestate Jurisdiction
ORIGINAL SIDE

PLA/91/2023

IN THE GOODS OF :
ASHISH KUMAR BARUA ALIAS ASISH KUMAR BARUA, DECEASED

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: March 18, 2025.

Appearance:

Mr. Sourojit Dasgupta, Adv.

Mr. Ashis Kumar Mukherjee, Adv.

Mr. Saurabh Prasad, Adv.

Mr. Avijit Kar, Adv.

....for the petitioner

1. Mr. Sourojit Dasgupta, learned Counsel, is appearing for the petitioner.

2. The petitioner has filed the present application for grant of probate of the last Will and Testament dated 4th October, 1996 of the testator, Ashish Kumar Barua @ Asish Kumar Barua.

3. Counsel for the petitioner submits that during his lifetime the testator has executed his last Will and Testament by appointing the petitioner as sole executrix of his last Will and Testament. The testator died on 7th September, 2006 leaving behind six legal heirs, i.e. mother of the testator, namely, Nalini Barua (since deceased), married eldest daughter, namely, Smt. Swati Sengupta, who is also the attesting witness, second married daughter of the petitioner, namely, Anusree Banik, who is also the executrix of the Will, younger married daughter, namely, Smt. Madhumita

Barua Banerjee, and son, Mr. Arunangshu Barua. All legal heirs have filed their affidavit of consent stating that they have no objection for grant of probate of the last Will and Testament to the petitioner.

4. Counsel for the petitioner submits that the original Will has been misplaced and is not traceable and accordingly, the petitioner has made a complaint to the Officer-in-Charge, Jadavpur Police Station on 30th May, 2022 by way of G.D.E. (General Diary) No. 2139 dated 30th May, 2022.

5. As the original Will was not in the hand of the petitioner and relying upon certified copy of the Will, accordingly, the petitioner has proceeded with the matter to prove the Will in solemn form.

6. The petitioner is examined as P.W.-1. During her examination, she has categorically stated that she could not get the original Will and, accordingly, she has made a complaint to the concerned police station and the complaint is marked as Exhibit-A and the signature of the witness/petitioner is marked as Exhibit A/1 and the seal and signature of the concerned police station wherein the G.D.E. is mentioned is marked as Exhibit A/2.

7. The Will dated 4th October, 1996 is a registered Will, accordingly, the petitioner has relied upon the certified copy of the registered Will but during examination of the petitioner, it is found that in the certified copy of the registered Will, there is no signature appearing with regard to the attesting witnesses. Accordingly, the petitioner has identified the signatures of the attesting witnesses in the Xerox copy of the Will, which is encircled with blue ink. As the certified copy of the Will which the petitioner has relied upon does not contained the signatures of the attesting witnesses

this Court has issued subpoena to the District Sub-Registrar, Jalpaiguri for production of original Book No. 3, Volume No. 1, Page Nos. 73 to 76, document No. 19 of 1996 dated 2nd December, 1996.

8. The District Sub-Registrar, Jalpaiguri has sent original Book No. 3 before this Court. The witness has identified the original register along with the certified copy which has been provided to the petitioner and submitted that the Exhibit-B which is the certified copy of the Will is the copy of the original register maintained in the Office of District Sub-Registrar, Jalpaiguri.

9. Counsel for the petitioner submits that the Will was registered in the year 1996 and at that point of time, the registration has been done in accordance with The West Bengal Registration (Filing of True Copies) Rules, 1979 in which the provision of registration of a document has been provided.

10. Counsel for the petitioner relied upon Rule 3, 4, 5(1) and (2) and (7) of the said Rules which reads as follows:

3. Manner of presentation of documents for registration. –

Every document that is presented for registration shall be accompanied by a true copy (hereinafter referred to as copy) thereof prepared in the manner specified in these rules.

Such copy shall be furnished by the person presenting the document for registration. If required by the Registering Officers the party shall supply the necessary number of blank forms for copying the endorsements and certificates.

4. Standard form of copy.- (1) The copy shall be printed on durable paper and shall be 43 cms. in length and 30.5 cms. in breadth and shall have in the front side vertical border

lines printed 4 cms. from the edge at the top and 6.5 cms. from the edge at the bottom and 4 cms. from edges both on left and right sides and shall contain 33 printed horizontal lines within the rectangle form by the border lines for writing copy of documents. It shall bear the state emblem at the top.

Outside the border line at the top shall be printed the words "Registration Department, West Bengal" on the left side, and the expression document No.....of at the right side. Outside the border line at the bottom shall be printed the words "Signature of Presentant" on the left side and below this shall be printed on the left side words and brackets.

"Compared by (Reader)
(Examiner)"

"Name of Deed-writer"

"Name of Copy-writer"

and on the right side, the sheet endorsement as indicated below.

"Copy of Document No.....of.....of Book.....
contains.....sheets/sheet..... Sub-Registrar".

(2) The form shall have two holes punched in it on the left side for filing The reverse side of it shall be similar to the front side except that it shall not contain the State Emblem and the sheet endorsement, and in it the vertical border line on both sides be 4 cms. from the edges.

(3) The government shall make standard form of such copy available for sale in the Registration Offices and by such other persons as the Government may approve in this behalf at such prices as may be fixed by the Government from time to time.

5. Preparation of copy.- (1) The copy shall be written, typed, printed or lithographed on the ruled lines in a clear and legible manner. The writing, printing and lithographing shall be in long lasting blue-black or black ink and typed copies shall have long lasting blue-black or black impressions.

(2) Each copy shall be exact reproduction of the 'original document but it need not be a facsimile copy. Everything appearing on each page of the original document including the signatures of the parties, attesting witnesses etc. shall be faithfully copied in the copy.

...

(7) The preparer of a copy shall draw a 2 cms. line at the end of the copy and enter the words "copy prepared by" and sign after this entry.

11. This Court finds that as per the provisions of West Bengal Registration (Filing of true copies) Rule, 1979 the Will was registered and in the last page of the Will, name of attesting witness, namely, Swati Sengupta is appearing and in the said registered Will signature of testator is also appearing.

12. This Court finds that the Will is dated 4th October, 1996 and the testator died on 7th September, 2006 but the petitioner has filed the present application in the month of March, 2023. The petitioner has explained the delay as to why the petitioner has not immediately filed the application for grant of probate of the said Will.

13. This Court finds that the petitioner has explained the delay for non-filing the application for grant of probate in Paragraph 7 to Paragraph 11 of the present application.

14. This Court is satisfied with the explanation made by the petitioner as to why the petitioner has not filed the application immediately after the death of the testator.

15. Considered the submissions made by the Counsel for the petitioner. Perused the certified copy of the Will, evidence of the petitioner, evidence of the official of the District Sub-Registrar, Jalpaiguri and the copy of the complaint made by the petitioner before the concerned police station wherein she has lodged the complaint with regard to loss of the original Will.

16. Considering the above documents, this Court finds that the petitioner has proved the Will and is entitled to get the probate.

17. The department is directed to issue probate to the petitioner of the last Will and Testament dated 4th October, 1996 on compliance of all formalities.

18. At the time of grant of probate, the copy of the Will be made part of the probate.

19. PLA/91/2023 is disposed of.

(KRISHNA RAO, J.)