

ORDER SHEET

APOT/237/2024  
WITH  
PLA/80/2023  
IA NO: GA/1/2024, GA/2/2024

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
ORIGINAL SIDE

IN THE GOODS OF:  
SATYA BRATA GHOSH ALIAS SATYABRATA GHOSH DECEASED  
MICHAEL GHOSH ALIAS MICHAEL SOUMEN GHOSH  
VERSUS  
ANURADHA MUKHOPADHYAYA AND ANR.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 11<sup>th</sup> February, 2025.

Appearance:

*Ms. Malabika Roy Dey, Adv.*

*...for the appellant*

*Mr. Reetobroto Mitra, Adv.*

*Mr. Arindam Guha, Adv.*

*...for the respondents*

1. The appellant claims himself to be the biological son of one Satya Brata Ghosh (hereinafter referred to as the 'testator'). The testator was a chartered accountant and was one of the partners of Pricewaterhouse. During his lifetime, he made wealth and properties.
2. The dispute arose when the executors made an application for grant of probate of Will which covers the properties of the deceased in India. It appears that the solicitor firm engaged by the executors have initially approached the appellant for an affidavit of consent. There has been some discussion between the parties. Ultimately, the appellant refused to sign the affidavit of consent on the ground

that he was described as the step son in the Will. Without disclosing such conversation between the parties and the approach made to the appellant for his consent to the grant of probate, an application was filed for grant of probate and the said application was eventually allowed by the learned Single Judge after taking into consideration that the step son of the testator born out of the wedlock between his wife and her first husband does not qualify as a legal heir under the Hindu Succession Act, 1956. The two daughters of the testator are his heiress-in-intestacy. The probate Court proceeded on the basis of the submission made on behalf of the executors that the petitioner is the step son on the understanding that the Will mentioned the petitioner as his step son. Immediately upon being aware of the said grant, an application for revocation of the probate was filed.

3. Ms. Malabika Roy Dey, learned counsel appearing on behalf of the appellant submits that the learned Single Judge has failed to take into consideration previous correspondences prior to the death of his biological father where he has been described as a son of the deceased. These correspondences are sufficient for the probate Court to give an opportunity to the appellant to contest the proceeding. Moreover, the use of the words 'step son' raises suspicion having regard to the surrounding circumstances leading to the execution of the Will. The learned Single Judge was of the view that the status of the appellant could not be decided in this application and has dismissed the said application with the observation that the parties shall be at liberty to approach the

appropriate civil forum for adjudication of their disputes insofar as the status of the present appellant is concerned.

4. The learned Trial Court has also refused to direct conducting a DNA Test or DNA Lineage Test for the purpose of ascertaining the status of a party to the proceedings.
5. It transpires from the submission of the learned counsel for the parties that the appellant was hurt by the use of the word 'step son' in the Indian Will. There are few documents disclosed by the appellant to show that the testator described him as a son in a proceeding at Manchester in the year 1988 and also in the Will in respect of the overseas properties as 'children' in conjunction with his another daughter Suzy Indira Ghosh.
6. Learned counsel for the appellant has drawn our attention to Clause 3.3 in respect of the English property where the testator directly divided the residue between 'my children', Michael Ghosh and Suzy Indira Ghosh. This raises a doubt with regard to describing Michael Ghosh as a step son in the Indian Will. However, what was really in the mind of the testator in describing Michael as his step son is not relevant at this stage as Michael first has to establish his status as the biological son which cannot be decided in a probate proceeding. There is no contemporaneous evidence on record to show that the testator was described as the biological father of the appellant. Significantly, even after a dispute was raised, no suit was filed for a declaration of the status of the present appellant as the biological son of the deceased. It is possible that Michael was advised that in the probate proceeding

his status would be determined. However, the limitations as observed by the learned Single Judge with regard to the jurisdiction of the probate Court, the said issue cannot be decided. Only on such consideration, we do not find any merit in this appeal. However, we make it clear that the status of the present appellant is not decided in the appeal.

7. Since an action is contemplated by the appellant for establishing his right, there shall be an order of status quo with regard to further administration of the estate for a period of four weeks.
8. The executors shall file an affidavit in the department concerned with regard to the administration of the estate till date upon a copy of the said affidavit being served upon Ms. Malabika Roy Dey, Advocate.
9. We make it clear that this order shall not influence the Civil Court in the event any proceeding is initiated by the parties against each other concerning the status of the appellant.
10. The appeal and the applications are disposed of.
11. Since no affidavit-in-opposition has been called for, the allegations made are deemed not to have been admitted.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)