

OD-47

ORDER SHEET

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

TS/8/2022

IN THE GOODS OF:
FATICK CHANDRA SHAW ALIAS FATICK CHANDRA SHOW
AND RENUKA SHOW (DECEASED)
-AND-
TANMOY SHOW
VS
MOLI SARKAR

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : 21st February, 2025.

Appearance :
Mr. Purnasish Gupta, Adv.
Ms. Soma Kundu, Adv.
... for the plaintiff

The Court: Mr. Purnasish Gupta, learned Counsel appearing for the plaintiff.

The plaintiff had initially filed an application being PLA/324 of 2021 praying for grant of probate. After the issuance of citation one of the legal heirs has filed caveat and affidavit in support of caveat and accordingly the PLA has been treated as contentious cause and converted into testamentary suit.

During the pendency of the suit, the caveatrix has not come forward to continue with the case and accordingly the suit was taken as undefended suit.

During the evidence. Counsel for the plaintiff submitted that the testator and testatrix have jointly executed their last Will and Testament

on 14th January, 2011 by appointing Mr. Biddut Kumar Show and Mr. Tanmoy Show as joint executors of their last Will and testament.

The testator namely Fatick Chandra Shaw died on 25th August, 2020 and the testatrix Renuka Show died on 13th March, 2018 leaving behind 4 legal heirs including the petitioner. Out of the 4 legal heirs, two legal heirs have filed their consent and one legal heir filed the affidavit in support of caveat, but subsequently she has not contested to prove her affidavit in support of her caveat. The petitioner has examined himself before this Court along with one attesting witness. The witness, during the evidence has categorically stated that the testator and the testatrix have executed their last Will and Testament in his presence and in the presence of another attesting witness while appointing the petitioner and another person as joint executors of the last Will and Testament.

The attesting witness, during his evidence, has identified the Will which has been marked as Exhibit "A". Signatures of the testator and the testatrix have been marked as Exhibit "A/1" and "A/10" respectively and signatures of the witnesses have been marked as Exhibit "11" and Exhibit "12" respectively.

The petitioner has been examined himself and during his evidence he has tendered the death certificates of the testator and the testatrix which are marked as Exhibit "B" and "B/1" respectively. He has also identified the signature of the testator and testatrix as well as that of the attesting witnesses.

Heard the learned Counsel appearing for the petitioner, perused the original Will, death certificates of the testator and the testatrix, and evidence of witness.

This Court finds that by examining the attesting witness, the petitioner has proved the Will wherein the attesting witness has categorically stated that the testator and the testatrix have executed their last Will and Testament in his presence and in presence of another witness by appointing the petitioner as executor. One of the legal heirs had initially filed the caveat but subsequently, she failed to come before this Court to contest the proceeding.

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

The department is directed to issue grant probate of the last Will and Testament of the testator and the testatrix on compliance of all formalities. At the time of grant of probate the copy of the Will be made part thereof.

TS/8/2022 is disposed of.

(KRISHNA RAO, J.)