

OD-2

ORDER SHEET
APOT/191/2025
With
PLA/147/2023
IA NO: GA/2/2025

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IN THE GOODS OF:
SHYAM NARAYAN SHAW (DEC.)
AND
RAJ NARAYAN SHAW

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE OM NARAYAN RAI

Date : September 25, 2025.

Appearance:
Mr. Debdut Mukherjee, Adv.
Mr. Debanjan Mandal, Adv.
Mr. Tapan Sil, Adv.
Mr. Ayan Dutta, Adv.
Mr. A. Bhar, Adv.
..for the appellant

Dictated by Arijit Banerjee, J.

1. An order dated March 10, 2025, passed by a learned Judge of this Court in PLA 147/2023, is under challenge in this appeal. The impugned order reads as follows:-

“The Court: - Since it appears from the schedule of assets filed in this proceedings that there is one immovable property situate at Azamgarh, Uttar Pradesh, the petitioner has to take steps for complying with the provision of Section 283(3) of the Indian Succession Act, 1925 as the said provision has been held by this Court to be mandatory in the judgment and order dated 16th January, 2025 delivered in PLA No. 115 of 2023 (in the Goods of Prabir Chandra Sen, since deceased).”

2. One Shyam Narayan Shaw passed away on September 26, 2022, as would appear from a copy of the death certificate issued by the Municipal Corporation, Government of West Bengal. He left behind a will dated March 4, 2022, which the appellant says is the last will and testament of the deceased.

3. The deceased left behind as is only legal heirs, his wife Subhadra Devi Shaw, his daughter Sushma Jaiswal and his son being the present appellant. We see from the will of the deceased that is sought to be probated that the deceased left behind properties both within and outside the territorial jurisdiction of the City Civil Court at Kolkata which is co-extensive with the ordinary original civil jurisdiction of this Court. Hence, this Court would have jurisdiction to entertain an application for probate of the said will.

4. The appellant applied for probate of the said will. On such application the impugned order was passed.

5. By our judgment and order dated September 22, 2025 we set aside the learned Single Judge's order dated January 16, 2025, passed in PLA no. 115 of 2023 (In the goods of: Prabir Chandra Sen, Deceased).

6. We find that the facts of this case and the facts of *In the goods of: Prabir Chandra Sen, since Deceased* are very similar. In the other case, all the heirs in intestacy had affirmed affidavits consenting to grant of probate in favour of the executor of the will. In the present case also, the wife and daughter of the deceased

who are two out of three heirs in intestacy (the appellant being the third one) have affirmed consent affidavits in support of grant of probate to the appellant, who is the named executor. Hence citation has not been issued as the same is unnecessary going by the relevant provisions of the Original Side Rules of this Court as discussed in detail in our judgment and order dated September 22, 2025 passed in appeal no. APOT/139/2025. Hence, the question of the appellant/petitioner complying with the provision of Section 283(3) of the Indian Succession Act, 1925 does not arise.

7. The judgment and order in appeal no. APOT/139/2025 shall govern this case also. Consequently, the order under appeal is set aside. The learned Single Judge is requested to decide the appellant's probate application in the light of the observations and findings in our judgment and order dated September 22, 2025 passed in appeal no. APOT/139/2025.

8. The appeal and connected application are disposed of accordingly . There will be no order as to costs.

9. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)