

OD-47

ORDER SHEET

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

PLA/299/2022

IN THE GOODS OF:
RASANA BALA DASSI ALIAS RASANA BALA BHANDARI (DECEASED)

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : 25th March, 2025.

Appearance :

Mr. Altamash Alim, Adv.

Mr. L. R. Mondal, Adv.

Mr. M.M. Rahaman, Adv.

...for the petitioner

1. Mr. Altamash Alim, learned Counsel, is appearing for the petitioner.

2. Petitioner's witness is present on recall. During examination, the witness has identified the Will which is marked as Exhibit A and also identified the signature of the attesting witnesses which are marked as Exhibits A/1 and A/2.

3. Evidence of the plaintiff witness is concluded and witness is discharged.

4. The petitioner has filed the present application for grant of probate of the last Will and Testament dated 26th June, 1982 of the testatrix Rasana Bala Dassi alias Rasana Bala Bhandari. Counsel for the petitioner submits that the testatrix has executed her last Will and Testament by appointing the petitioner as a sole executor of her last Will and Testament in presence of two attesting witnesses. The testatrix died on 31st August, 1993 without any issue. She left behind her three nephews.

Out of three nephews one of the nephew is the petitioner before this Court and others two nephews have given their affidavit of consent stating that there is no objection for grant of probate of the last Will and Testament to the petitioner. The petitioner says that both attesting witnesses passed away and their death certificates are enclosed with the probate application.

5. The petitioner has examined one witness namely, Soumen Kumar Dey, being the attending witness to the last Will and Testament. In his evidence he has stated that the testatrix had executed her last Will and Testament in his presence and in presence of two attesting witnesses and in his presence the testatrix has put her LTI and both the attesting witnesses have also signed in his presence but the testatrix as well as both the attesting witnesses have passed away.

6. As the witness has identified the Will as well as the signature of the attesting witnessess, accordingly the Will is marked as Exhibit A and the signatures of the attesting witness are marked as Exhibit A/1 and Exhibit A/2.

7. This Court finds that the Will is of 26th June, 1982 and testatrix died on 31st August, 1993 but the petitioner has filed the present application for grant of probate on 10th June, 2022. The petitioner has explained the delay as to why the petitioner has not filed the present application immediately after the death of the testatrix in paragraph no.13 of the application. The petitioner stated that the deceased died on 26th June, 1982, but the Will was misplaced. Recently the petitioner has got the original Will in some of old scraped papers lying in the store room of the premises No. 22/1, Creek Lane, P.S. Muchipara, Kolkata-14 and after

discovery of the said original Will, the petitioner has immediately filed the present application.

8. Perused the original Will, death certificate of the testatrix, death certificate of the attesting witness and evidence of the attending witness as well as the explanation made by the petitioner in paragraph 13 of the probate application.

9. This Court finds that the attending witness has categorically stated before this Court that the testatrix has executed her last Will and Testament in his presence and in presence of the two attesting witnesses as well as the attesting witnesses have signed the said Will.

10. Considering the above, this Court finds that the petitioner has proved the Will and is entitled to get the probate as the petitioner has properly explained the delay as to why the petitioner has not filed the probate immediately after the death of the testatrix.

11. In view of the above, the department is directed to issue probate of the last Will and Testament of the testatrix, date 26th June, 1982 on compliance of all formalities.

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

13. PLA/299/2022 is disposed of.

14. The Department is directed not to draw up and complete the order.

(KRISHNA RAO, J.)