

ORDER SHEET

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

PLA/258/2023

IN THE GOODS OF:
NIKUNJA BEHARI SAHA (DECEASED)

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : February 19, 2025.

Appearance

Mr. Udaynarayan Betal, Adv.

Mr. Mriganka Patna, Adv.

...for the petitioner

The Court : Mr. Udaynarayan Betal, learned Counsel, is appearing for the petitioner.

The petitioner has filed the present application for grant of probate of the last Will and Testament dated 21st July, 1992.

Counsel for the petitioner submits that the testator had appointed the petitioner as executrix of his last Will and Testament, failing her, Smt. Saroj Kharkia shall be the executrix of the Will.

Counsel for the petitioner submits that the testator died on 13th July, 2001 and the wife of the testator died on 18th May, 2000.

At the time of filing of the present application, the petitioner has described two legal heirs of the testator as wife and one son but subsequently, when the petitioner came to know the wife has also expired and son has also expired. Accordingly, the petitioner has filed the application for amendment for deletion of the name of the wife of the testator who died on 18th May, 2000 and after the death of son, the details of the legal heirs of the son of the testator have been disclosed in the present

application. The son of the testator died leaving behind his wife, namely, Sarbani Saha, who is the daughter in law of the testator and one daughter, namely, Anasua Saha, who is the granddaughter of the testator. The testator also leaving behind his daughter, namely, Namita Dey Sarkar and one son, namely, Biswajit Saha. Accordingly, the petitioner has made amendment in the probate application by bringing all the legal heirs of the testator on record.

After the amendment, all the 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.

One of the attesting witnesses, namely, Pralay Choudhury, has filed affidavit stating that the testator had executed his last Will and Testament in his presence and in presence of another attesting witness while possessing good health and fit state of mind by appointing the petitioner as executrix.

Considered the submission made by the Counsel for the petitioner.

Perused the original Will, death certificate of the testator, death certificate of the wife of the testator, death certificate of the son of the testator.

This Court has also considered the affidavit of consent of all the legal heirs of the testator as well as affidavit of attesting witness.

The legal heirs have categorically stated that they have no objection for grant of probate of the last Will and Testament to the petitioner. The attesting witness has categorically stated that in his presence and in presence of another attesting witness, the testator had executed his last Will and Testament while possessing good health and fit state of mind by appointing the petitioner as sole executrix.

This Court finds that the Will is dated 21st July, 1992 but the petitioner has filed the present application for grant of probate in the month of July, 2023. The petitioner has categorically explained the delay as to why the petitioner has not filed the probate application immediately after the death of the testator. It is found from the explanation that the Will was not traceable and subsequently only on 25th May, 2023 the petitioner has got the Will from the bunch of old papers and immediately the petitioner has filed the present application.

This Court is satisfied with the explanation given by the petitioner for not filing the probate application immediately after the death of the testator.

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

Accordingly, the Department is directed to issue probate to the petitioner of the last Will and Testament dated 21st July, 1992 on compliance of all formalities.

PLA/258/2023 is disposed of.

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

(KRISHNA RAO, J.)