

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

Present:

The Hon'ble Justice Sugato Majumdar

TS/4/2019

**IN THE GOODS OF:
SMT VIMLA GUPTA (DEC)**

For the Plaintiff : Mr. Rajarshi Dutta, Adv.
Mr. Shaunak Mukhopadhyay, Adv.
Mr. Sayantan Bose, Adv.
Ms. Manisha Das, Adv.

Hearing concluded on : 05/02/2025

Judgment on : 10/02/2025

Sugato Majumdar, J.:

This is an application for grant of probate of the last will and testament of late Vimla Gupta, since deceased, the testatrix herein.

The original application, being numbered as PLA No. 351 of 2017, was filed by the Executor Sunil Kumar Agarwal praying for grant of probate of the last will and testament of late Vimla Gupta, since deceased.

The testatrix executed her last will and testament dated 15/12/2015 in English language. The testatrix breathed her last on 31/08/2016 having permanent place of abode at Flat No. 73, Ambika Tower, 7th Floor, 40, Dobson Road, P.S.-Golabari, Howrah, outside the original side jurisdiction of this Court. The testatrix breathed her last at Belle Vue Clinic, Kolkata. In terms of the will, the testatrix appointed the petitioner Sunil Kumar Agarwal as the executor of the will. The testatrix left assets

both within as well as outside the jurisdiction of this Court. At the time of death, the testatrix was survived by her husband Ishwar Chandra Gupta, her son Anand Gupta and five daughters Smt. Anita Agarwal, Smt. Seema Jain, Smt. Preeti Kabra, Smt. Swati Bansal and Smt. Pooja Kabra. The application for probate was filed properly in terms of the Original Side Rules of this Court.

Mr. Anand Gupta, son of the testatrix filed caveat supported by affidavit. Once the probate proceeding became contentious, it was renumbered and the affidavit supporting the caveat became treated as the written statement.

Contention of the Caveator, as set out in the affidavit supporting the caveat is that signature of the testatrix, as appeared in the last will and testament dated 15/12/2015 is not the usual signature. Therefore, the Caveator challenged due execution and genuinity of the will. It is further contended that the Will was drafted in English language. The testatrix, who studied upto primary level in Hindi medium school, had very little knowledge in English language. She could only put her signature in English in disjointed letters without understanding the legal jargons. It is further contended that the date and month of execution of the will were kept blank at the time of typing. Date was put afterwards by hand writing of an unknown person without there being any signature of the testatrix at the margin of such insertions. This gave rise to suspicion as to the actual date of execution of the will. The next contention is that the alleged will is non-speaking purporting to dis-inherit the Caveator, the only son of the testatrix, who had, all along good relationship with her. The next contention is that the testatrix had declared during her life time that her undivided 50% share in the Flat No. 73 on the 7th Floor of Ambika Tower, 40, Dobson Road, Howrah and her jewelries and ornaments would solely and exclusively belong to the Caveator. But the will speaks to the contrary giving rise to reasonable

belief that the alleged will was forged and fabricated. According to the Caveator, probate of the will should not be granted.

On the basis of rival pleadings, the following issues were framed by the Co-ordinate Bench:

1. *Whether the last will and testament of the deceased dated 15/12/2005 of late Vimla Gupta was validly executed and attested in accordance with law?*
2. *Whether the last will and testament of the deceased dated 15/12/2015 was executed by the deceased in free and proper state of mind, memory and understanding as alleged in Para.4?*
3. *Whether the purported last will and testament dated 15/12/2015 of the testatrix, Smt. Vimla Gupta is the genuine will of Smt. Vimla Gupta and bears her usual signature?*
4. *To what other relief or reliefs is the Plaintiff entitled to?*

The Executor of the will as well as the attesting witnesses deposed in the suit. The Defendant/Caveator cross-examined them. Thereafter, caveat was withdrawn and the Defendant/Caveator did not adduce any evidence.

For the sake of brevity, all the issues are taken up together for consideration.

It is admitted in the written statement or rather in the affidavit-in-support of the caveat that this is the last will and testament of the testatrix, though it is alleged to be forged and fabricated.

The Learned Counsel for the Plaintiff argued that there are plethora of decisions and it is settled principle of law that whoever alleges fraud or forgery in execution of the will must prove that. The Defendant failed to discharge the burden of proof. Therefore, these allegations are not proved.

In Rani Purnima Debi & Anr. Vs. Kumar Khagendra Narayan Deb & Anr. (AIR 1962 SCC 567), four Judges' Bench of the Supreme Court of India succinctly clarified this:

“The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court.”

Coming to the case in hand, the Defendant/Caveator did not adduce any evidence, failing thereby to discharge the burden of proof. Therefore, allegations of fraud or fabrication is not proved. I agree with the submission of the Learned Counsel.

The attesting witnesses were cross-examined. In course of cross-examination, they did not detract from their statements made in course of examination-in-chief. The Executor and the attesting witnesses stated that the testatrix had good mental and physical condition at the time of execution of the will. Though she was not conversant with English language yet she used to sign in English. Contents of the will were explained in Hindi to the testatrix and she was able to understand the

contents thereof. Hand written insertions had already been made in the will prior to execution. Both the attesting witnesses were present at the time of execution of the will and the testatrix signed the will in their presence. Death certificate of the testatrix had also been adduced in evidence. Evidences of the attesting witnesses as well as the Executor could not be shaken in cross-examination, as observed earlier. The husband of the testatrix is that beneficiary of the will. There is no unnatural disposition of the estate of the testatrix.

On appreciation of evidence, this Court comes to conclusion that the instant will is the last will and testament of the testatrix which was duly executed in presence of the attesting witnesses. The testatrix was physically fit and mentally alert at the time of execution of the instant will. Evidences adduced, do not indicate existence of any suspicious circumstances surrounding the execution of the will. Therefore, probate of the instant will may be granted.

All the issues are decided in favour of the Plaintiff/Petitioner.

Hence, it is ordered that probate may be granted to the instant will being the last will and testament of the deceased Vimla Gupta, dated 15/12/2015.

Inventory and accounts shall be filed within six months from the date of grant of probate.

The instant suit is disposed of accordingly.

(Sugato Majumdar, J.)