

OD-5

ORDER SHEET

PLA 400 of 2022

IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY & INTESTATE JURISDICTION

IN THE GOODS OF :
SMT. ARPITA SAHA, DECEASED

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 22nd May, 2025

Mr. Ranjit Kr. Basu, Ms. Aishwarya Jayshree, Advocates
for the petitioner.

The Court : This is an application for grant of probate of the last Will and Testament dated 10th May, 2010 said to have been left behind by the deceased abovenamed *inter alia* under the provisions of 237 of the Indian Succession Act, 1925 (in short 1925 Act). The said Will is a registered Will but has been according to the propounder lost and/or destroyed in fire. The application, therefore, is made with a certified copy of the said Will. The Will was directed to be proved on solemn form.

On behalf of the applicant two witnesses have been examined, one is Varun Goenka, who is the executor and applicant for the grant and the other is Gopal Kumar Jhunjhunwala, one of the attesting witnesses to the said Will. The husband of the testatrix had predeceased her. There are two daughters of the testatrix who are the heiresses in intestacy. The two daughters have consented to the grant. The execution of the Will which is a registered document has been proved by the affidavit of Gopal Kumar Jhunjhunwala, one of the attesting witnesses.

After considering the evidence and the documents tendered, I find that the occurrence of fire at the premises wherein the original registered Will was kept by the executor has been proved. The corroborating evidence is the complaint to the police about such fire. Although, the police complaint does not give the particulars of the documents and materials to have been destroyed in fire but contemporaneous complaint read with the evidence of Varun Goenka and Gopal Kumar Jhunhunwala convinces this Court that the Will was kept at a wooden cupboard at the office of the executor situate at P-243, Lake Town, Block-A, Kolkata – 700089.

The said Will dated 10th May, 2010 had been registered before the Additional Registrar of Assurance-III, Kolkata and recorded in Book No.III, CD Volume No.1, pages 5646 to 5656 being No.00626 for the year 2010. It also appears from the photocopy of the official seal and signature appended on the certified copy of the said Will that the document was presented for registration on 10th May, 2010. The photocopy of the signature of the testatrix also appears on all pages of the certified copy of the said registered Will. The photocopy of the document issued by the Government of West Bengal, Department of Finance (Revenue), Directorate of Registration and Stamp Revenue which is annexed to the petition along with the certified copy of the Will shows the photograph of the testatrix appended thereto and the presentation of the document on 10th May, 2010. The photocopy of the signature of the testatrix is also appearing in the said document which is on a comparison through naked eye appears to be identical. The endorsement for deed number pertaining

to the said Will and admission of execution thereof before the registering authority is also evident from a photocopy of a document annexed to the said petition along with the certified copy of the said Will.

After considering the documents and evidence led, I also find that the tests required to prove a document as secondary evidence under the Indian Evidence Act, 1872 as laid down in the judgment reported in **(2007) 5 SCC 730 (J. YASHODA VS. K. SHOBHA RANI)** are also fulfilled. The evidence led by the two witnesses, therefore, not only proves the execution of the document but of the fact that the same was registered and has been destroyed and/or lost. The test required for fulfilling the legal necessity to establish a document to have been lost or destroyed has also been demonstrated by the propounder through the two witnesses examined. The judgments cited by the propounder reported in **(2003) 2 SCC 91 (Janki Narayan Bhoir Vs. Narayan Namdeo Kadam), AIR 1968 ALLAHABAD 425 (Jagdish Prasad and another V. Girja Shankar) and (2007) 5 SCC 730 (J. YASHODA VS. K. SHOBHA RANI)** support the case of the propounder in relation to secondary evidence and the proof necessary to establish that a Will after having been executed and registered is either lost or destroyed but the execution and existence thereof cannot be denied. Moreover, the heiress in intestacy despite on being served with due notice have not come forward to object to the grant on the contrary consented to the same. The chain of events, the materials placed on record, the evidence led also satisfies the requirement of Section 237 of the 1925 Act. The execution of the Will having been proved in common as also in solemn form through a certified copy of the

registered document and that after exercising a reasonable diligence to notify the presence of those who have a caveatable interest. There is no objection to the grant. The facts as discussed above coupled with the departmental scrutiny, the probate of the Will dated 10th May, 2010 executed by the testatrix is granted in favour of the petitioner/propounder. The department is directed to issue the grant with a certified copy of the Will dated 10th May, 2010 annexed thereto in favour of the petitioner/executor with the necessary requirement to file inventory and accounts. The petitioner shall be permitted to replace the certified copy of the Will annexed to the application for grant of probate being PLA 400 of 2022 by submitting a loco copy thereof so that the certified copy annexed to the application can be made part of the grant directed to be issued in favour of the petitioner/executor.

PLA 400 of 2022 is, accordingly, disposed of.

(ARINDAM MUKHERJEE, J.)