

OD-44

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

PLA/394/2023
IN THE GOODS OF:
SRI JYOTIRMOY BARUA, DECEASED

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date: 25th February, 2025.

Appearance:
Mr. Udaynarayan Betal, 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 28th January, 2008 of the testator Sri Jyotirmoy Barua. Petitioner says that the testator had executed his last Will and Testament by appointing the petitioner as the sole executrix of his last Will and Testament while possessing good health and fit state of mind in presence of two attesting witnesses. The petitioner says that the testator died on 13th April, 2023 leaving behind three legal heirs, that is, his wife, his one son and daughter. Wife has filed her affidavit of consent. Wife is also one of the attesting witnesses. She has also stated in her affidavit that the testator had executed his last Will and Testament in her presence and in presence of

another attesting witness by appointing the petitioner as the sole executrix of the last Will and Testament. The wife has also stated that she has no objection for grant of probate to the petitioner. Neither the son nor the daughter has filed their affidavits of consent or caveat by raising any objection for grant of probate.

Accordingly, citations were issued. In spite of issuance of citations neither the son nor the daughter has come forward for raising any objection or to give consent for grant of probate.

The Department has submitted no caveat certificate dated 31 January, 2025 certifying that no caveat has been entered for grant of probate.

Counsel for the petitioner submitted that the petitioner has proved the Will and is entitled to the grant of the probate.

Heard the learned Counsel for the petitioner. Perused the original Will, death certificate of the testator, affidavit of the wife who has given consent as well as one of the attesting witnesses. The wife being the attesting witness has categorically stated that her husband being the testator of the Will had executed the Will in her presence and in presence of another attesting witness while possessing good health and fit state of mind by appointing the petitioner as sole executrix of his last Will and Testament. The son and daughter of the testator has not come forward notices were issued but inspite of the notice no caveat has been lodged.

Accordingly, the department has filed no caveat certificate.

Considering the above, this Court finds that the petitioner has proved the Will and is entitled to grant the probate of the last Will and Testament.

The Department is directed to issue probate of the last Will and Testament dated 28th January, 2008 of the testator Sri Jyotirmoy Barua, to the petitioner on compliance of all formalities. At the time of grant of probate a copy of the Will be made as part of the probate.

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

PLA/394/2023 is disposed of.

(KRISHNA RAO, J.)

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