

ORDER SHEET

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

PLA/554/2022

IN THE GOODS OF:
PUSPA GUHA, DECEASED

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : January 24, 2025.

Appearance:
Mr. Altamas Alim, Adv.
Mr. Saikat Halder, Adv.
Mr. Partha Pratim Mukhopadhyay, Adv.
...for the petitioner

The Court: Mr. Altamash Alim, learned counsel, is appearing for the petitioner.

The petitioner has examined two witnesses, namely, Ashok Sarkar and Dr. Rajendra Mitra. Plaintiff's Witness no.1 Ashok Sarkar, who is also the attesting witness of the Will, during his evidence has identified the certified copy of the original Will as well as signature of the testatrix as well as his signature and signature of the another attesting witness. The Will is marked as Exhibit-C, signature of the testatrix is marked as Exhibit-C/1, signature of this attesting witness is marked as Exhibit-C/2 and signature of another attesting witness is marked as Exhibit-C/3. He has also produced the death certificates of the testatrix and her husband and both the certificates were marked as Exhibit-A and Exhibit-B.

Another witness P.W.-2, namely, Dr. Rajendra Mitra, who is the executor of the last Will and Testament dated 22nd January, 2014, during his evidence has identified the certified copy of the original Will and he has stated that original Will was misplaced and he has applied for the certified

copy of the said Will which is enclosed with the present application. He has also submitted that he has made a complaint to the Officer-In-Charge of Jadavpur Police Station and, accordingly, G.D.E./887 dated 13th July, 2023 was recorded.

Both the witnesses have been examined and discharged. The petitioner says that he will not adduce any further evidence. Accordingly, evidence of the petitioner is closed.

Counsel for the petitioner submits that the testatrix had executed her last Will and Testament on 22nd January, 2014 in presence of two witnesses by appointing the petitioner as sole executor of her last Will and Testament. He submits that the husband of the testatrix was predeceased to the testatrix who died on 25th December, 2010 and testatrix died on 29th January, 2022 leaving behind two legal heirs but none of the legal heirs either come forward to give consent or to file caveat and affidavit in support of caveat. Accordingly, citations were issued but in spite of issuance of citations none has come forward to raise any objection for grant of probate. The department has submitted no caveat certificate dated 2nd December, 2024 certifying that no caveat has been entered against the grant of probate of the last Will and Testament.

Counsel for the petitioner during his argument has brought to the notice of this Court that one person, namely, Goutam Das, had appeared and filed caveat but subsequently by an order dated 12th April, 2024, Mr. Goutam Das has been discharged as caveator.

Counsel for the petitioner submits that the petitioner has proved the Will and is entitled to get probate of the last Will and Testament of the testatrix Puspa Guha.

Heard the learned counsel for the petitioner.

It is found from the record that original Will was misplaced and the petitioner has relied upon the certified copy of the Will.

To prove the Will, the petitioner has examined one attesting witness and the attesting witness has categorically stated that the testatrix has executed her last Will and Testament in his presence and in presence of another attesting witness. The attesting witness has identified the Will as well as the signature of the testatrix and his signature as well as the signature of another attesting witness.

The executor in his evidence has stated that the original Will was misplaced and he has obtained the certified copy of the Will as the last Will and Testament of the testatrix was a registered Will. He has identified the certified copy of the said Will and he has also identified the complaint made to the police authority with regard to the loss of the original Will. The said complaint is also marked as Exhibit-D.

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

The department is directed to issue probate of the last Will and Testament dated 22nd January, 2014 to the petitioner on compliance of all formalities.

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

PLA/554/2022 is disposed of.

(KRISHNA RAO, J.)