

OD-7

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Ordinary Original Civil Jurisdiction

PLA/274/2014

IN THE GOODS OF:
SUMITRA DEVI JAGATRAMKA (DECEASED)

Before:

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 25th JULY 2025

Appearance:
Mr.M.S. Tiwari, Adv.
Mr. R.K. Tiwari, Adv.
.....for the petitioner

The Court: This is an application filed by the petitioner praying for grant of probate of the Last Will and Testament dated 24-05-2003 of Sumitra Devi Jagatramka since deceased.

The contention of the petitioner in the application for grant of probate may be summed up thus:

1. On 22nd October 2013, Sumitra Devi Jagatramka died. At the time of death the testatrix was residing at 1 Clyde Row Hastings, Kolkata-700022. She was a Hindu inhabitant governed by the Mitakshara school of Hindu Law.
2. That the deceased was having some property within the state of West Bengal and on 24th May 2003 duly made and published her last Will in English Language and character whereby she appointed Mr. Arun Kumar Jagatramka the petitioner herein as the sole executor of the said Will.
3. That the due execution of the said Will is proved by the affidavit of Atma Ram Dubey one of the attesting witnesses to the said Will affirmed on 24-09-2014.
4. That the deceased left behind the following legal heirs as her legal representatives and no one else as per Hindu Succession Act 1956:-

1. Giridharilal Jagatramka – Husband
2. Arun Kumar Jagatramka – Son (Executor)
3. Lalita Agarwal – Daughter
4. Chandra Lekha Jain – Daughter
5. Dr. Manjula Jagatramka – Daughter
6. Leela Devi Layalka
(since deceased represented by)
 - i) Dr. Mahendra Kumar Layalka – Son in Law.
 - ii) Mr. Sanjay Kumar Layalka – Grandson
 - iii) Smt. Shashikala Chanani – Granddaughter
5. The deceased left moveable and immoveable property within and outside the jurisdiction of this Hon'ble Court, as stated in the affidavit of assets. The gross value of such assists to the best of the knowledge and belief of the petitioner will be sum of Rs. 38,09,372.08P and the net value whereof is Rs. 38,09,372.08P.
6. So far the petitioner is able to ascertain and aware of there are no other properties belonging to the deceased other than these specified in the said affidavit of assets.
7. That no intimation has been received by this Hon'ble Court or from any other High Court or the District Court of India for any grant of probate of this Will of the deceased above named or Letters of Administration of the property and credits and effects of the deceased.
8. That to the best of the petitioner's belief, no application has been made to any other High Court or District Court in the Union of India for any grant of probate of any Will or Letters of Administration of the property credits and effects of the deceased.

Pursuant to the filing of this application both general citation and special

citation were issued, but no caveat was lodged. Thus the matter is treated to be non-contentious.

The petitioner in the instant case has examined two witnesses. Atma Ram Dubey in his evidence has stated that the Will was executed by Ms Sumitra Devi Jagatramka in his presence and he knows her signature. He further stated that he also signed in her presence and identifies his signature. He also stated that the content of the Will has been explained by her husband and after understanding the purport of the Will she had put her signature.

Debraj Chandra in his evidence has stated that the Will is written by Ms. Sumitra Devi Jagatramka. He further stated that the Will has been signed by Sumitra Devi Jagatramka in his presence. He also stated that he has put his signature in the Will as witness no-2. He identifies his own signature and signature of Ms. Sumitra Devi Jagatramka.

Now the point for consideration is whether probate should be granted to the Will executed by. M.S. Sumitra Devi Jagatramka. In order to decide this issue it is necessary to consider the provisions contained in Section 59, Section 63 of the Indian Succession Act 1930 and Section 68 Of the Evidence Act.

Section 59 of the Indian Succession Act 1930 provides as follows:

S. 59. Person capable of making Wills – Every person of sound mind not being a minor may dispose of his property by Will.

Explanation 1- A married woman may dispose by Will of any property which he could alienate by her own act during her life.

Explanation -2- Persons who are deaf or dumb or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

Explanation 3- A person who is ordinarily insane may make a Will during interval in which he is of sound mind.

Explanation 4- No person can make a Will while he is in such a state of mind

whether arising from intoxicates or from illness or from any other cause that he does not know what he is doing. As per Section 63 of The Indian Succession Act 1925 every testator not being a soldier employed in an expedition or engaged in actual warfare [or an airman so employed or engaged] or a mariner at sea, shall execute his Will according to the following rules:

- a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some person in his presence and by his direction.
- b) The signature or mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.
- c) The Will shall be attested by two or more witnesses each of whom has seen the testator sign the Will in the presence and by the direction of the testator or has received from the testator a personal acknowledgement of his signature or mark or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary.

Section 68 of the Evidence Act 1872 provides as follows:

S-68. Proof of execution of document required by Law to be attested – If a document is required by law to be attested it shall not be used as evidence until one attesting witness has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document not being a will, which has been registered in accordance the provisions of the Indian Registration Act 1908 (16 of 1908) unless its execution by the person by whom it purported to have been executed is specifically

denied.

Thus upon considering the provision of Section 63 of the Indian Succession Act 1925 and the evidence adduced it will appear that the Will is executed upon complying the said provisions. Under Section 68 of the Evidence Act the execution of the Will is also proved by examining two of the attesting witnesses. The testatrix at the time of execution of Will was major and there is no evidence on record that she was incapable in executing the same. Thus this application should be allowed and probate should be granted.

Hence it is ordered that Probate of the Last Will and Testament dated 24-05-2003 of the deceased Sumitra Devi Jagatramka be granted to the petitioner as sole Executor named therein with effect throughout the Union of India. Let probate be issued upon compliance of necessary formalities.

(BISWAROOP CHOWDHURY, J.)

A.Bhar(P.A)