

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Biswaroop Chowdhury

F.A. 225 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Bhakti Pon and another
Vs.
Smt. Sumitra Chetri

For the appellants : Mr. B.P. Subba
Ms. S. Pradhan
Mr. Nadeem Ansari

Heard on : 07.05.2026

Judgment on : 07.05.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out of a proceeding for grant of Letters of Administration in respect of a Will of one Mr. Ralph Seymour Shove.
2. By the impugned judgment, the said application under Section 278 of the Indian Succession Act was dismissed, primarily on the ground that there was no explanation as to why the letters of

administration application was made long after the death of the testator.

3. Learned counsel appearing for the appellants points out that the original Will could not be traced out, leading to the delay in instituting the proceeding.
4. However, a certified copy of the said registered Will was produced in the trial court.
5. It is further submitted that since the attesting witnesses to the Will are no longer alive, the beneficiaries of the Will/present appellants, seek to prove the Will by circumstantial evidence, *inter alia*, by bringing as witness an octogenarian who had direct knowledge of the execution of the Will and also by production of a certificate by the concerned Bank, in the locker of which the original Will was initially kept but was subsequently destroyed.
6. We also find from the impugned judgment that the respondent herein, who initially objected to the Will, expressed her willingness to support the Will at the peremptory hearing of the suit.
7. In such view of the matter, further service of notice of the appeal on the respondent is dispensed with.
8. Upon a perusal of the impugned judgment, we find that the judgment is cryptic inasmuch as the learned testamentary court ought to have entered into the merits of the case and permitted

the legatees/appellants to prove the Will by whatever mode available, if necessary by circumstantial evidence, even if the original attesting witnesses are no longer in the world of the living.

- 9.** We say so on the premise of the paramount consideration in testamentary matters is that the endeavour of the court would be to give effect to the last desire of the late lamented testator.
- 10.** It is further well-settled that although the testamentary court is a court of judicial conscience, the approach of such court will not be a fault-finding one but an effort should be made to find out whether the Will was genuine and its execution was proper.
- 11.** In such view of the matter, we take up the appeal itself for adjudication.
- 12.** FA 225 of 2025 is, thus, allowed, thereby setting aside the impugned judgment and deemed decree dated September 9, 2024 passed by the learned Additional District Judge, Tenth court at Alipore, District- South 24 Parganas in Original Suit No.03 of 2011 and remanding the matter to the said court for the purpose of re-adjudication of the letters of administration suit on merits, upon grant of adequate opportunity to the appellants to adduce evidence, circumstantial if necessary, in the event the original attesting witnesses are proved to be dead, for the purpose of ascertaining whether the Will was duly

executed, and to dispose of the letters of administration proceeding afresh in accordance with law.

- 13.** CAN 1 of 2025 and CAN 2 of 2025 are also disposed of accordingly.
- 14.** We make it clear that the appellants shall be entitled to renew their prayers made in the said applications before the testamentary court after remand.
- 15.** There will be no order as to costs.
- 16.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)

AD-20
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