

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay**

**F.A. 362 of 2002
With
I.A. No. CAN 3 of 2014 (Old CAN 7254 of 2014)
And
I.A. No. CAN 4 of 2016 (Old CAN 11504 of 2016)**

**Smt. Ramani Bindai (since deceased)
represented by Shashankha Bindai & Ors.
Versus
Sri Badal Chandra Hait (since deceased)
represented by Smt. Tanibala Hait & Ors.**

For the Appellants : Mr. Gopal Chandra Ghosh, Id. Sr. Advocate,
Ms. Malyasree Maity,
Mr. Nishant Kumar.

For the Respondents : Mr. Rabindranath Mahato,
Mr. Aritra Shankar Roy.

Heard on : 11.03.2026, 18.03.2026 & 20.03.2026.

Judgment on : 20.03.2026.

Rajasekhar Mantha, J.:

1. The instant first appeal is directed against the judgment and decree of Probate dated 26th July, 2002 passed by the learned Additional District Judge, 5th Court, Midnapore in Other Suit No. 34 of 1995.
2. The brief facts relevant to the case are that the respondent Badal Chandra Hait filed an application under the Indian Succession Act, 1925

seeking Probate of the Will dated 2nd October, 1994 of one Abinash Chandra Hait, who died on 21st November, 1994.

3. The sole beneficiary under the Will is the respondent, namely, Badal Chandra Hait. The Schedule to the Will specified about 32 decimal of agricultural land comprising in Plot Nos. 2826 and 4099 at Mouza – Srirampur, J.L. No. 253 under Police Station – Tamluk in the District of Midnapur. Immediately after the death of Abinash, the respondent Badal Chandra Hait applied for recording his name as Bargadar in respect of 3 plots of land comprising of 32 decimals, namely, Plot Nos. 2826, 4099 and 4824 at Mouza – Srirampur, J.L. No. 253 under Police Station – Tamluk in the District of Midnapur.

4. Badal thereafter applied for Probate before the District Delegate of Midnapur on 9th January, 1995 being J. Misc. Case No. 2 of 1995. After filing of the above Misc. Case, the J. Misc. Case No. 2 of 1995 for Barga was dismissed as withdrawn.

5. The evidence of records indicates that the respondent Badal was the biological son of the testator's elder brother, Rakhal Chandra Hait. Badal was brought up by Abinash and his wife Kanan Bala, since he was six months old. Badal Chandra Hait was as young as about 4-5 years of age when the biological daughter of Abinash was given off his marriage to DW-3, Rakhal Chandra Bindai. She lived about six kilometers away from her parent's house.

6. The Will was dated 2nd October, 1994 and is stated to have been witnessed by three persons including PW-3, Bishnu Pada Roul. He was the father-in-law of the propounder Badal Chandra Hait. The scribe of the

Will was PW-4, a professional Deed Writer based at Tamluk Registry Office.

7. When the appellant came to know that the respondents applied for Probate, she filed an objection thereto whereupon the application became contentious and was renumbered as Other Suit No. 34 of 1995. A written statement was filed by the appellants disputing the father's signature on the Will and contending that the same was manufactured by the respondents.

8. The Trial Judge, after the pleadings were complete, framed issues. PW-1 was the propounder of the Will, namely, Badal Chandra Hait. PW-2 was Kanan Bala Hait, the wife of the testator. She deposed that the testator and herself brought up Badal as their own son. She deposed that she was present when the testator executed the Will. She also named the persons present including the witnesses as also the scribe of the Will. She deposed that she was visited the house of PW-3 one of the attesting witnesses the previous day and irked him to come as the next day to be the witnesses to the Will of her husband. It further appears from the records that after the application for Probate was made, PW-2 sold and disposed of a portion of her own property for the purpose of repair and reconstruction of their house. She also deposed that she handed over the Will to Badal after the Srad ceremony of her husband.

9. PW-3 was the attesting witness. He identified the signature of the testator and other witnesses. He narrated the entire execution of the Will and identified the persons present. It is an admitted position that the testator was not in very sound health at the time of execution of the Will.

His vision was poor but he was of sound mind and capable of testamentary disposition. The letters prepared and exhibited before the Trial Court indicate the same.

10. The scribe of the Will was PW-4, one Brojo Krishna Das. He was a Deed Writer by profession and was based at the Tamluk Registry Office. He deposed that he prepared a draft Will on the instructions of the testator. After hearing the draft Will the testator approved the same and final Will was written by PW-4. He narrated the names of all persons including PW-2 and PW-3, present at the time of execution of the Will.

11. On behalf of the defence, DW-1 was the appellant herself. She deposed that her father was not in any condition to execute any Will. She further deposed that the Will was forged and her father's signature is fictitious. She also stated in Court that the Will was manufactured after a failed attempt on the part of the propounder/respondent to obtain Barga of about 32 decimals of land the subject matter of the Will in question. The Schedule to the Will, however, bequeathed only 30 decimals of land to the respondent propounder. She also deposed that apart from the above suspicious circumstances is the fact that the Will does not make any provision for taking care of Kanan Bala Hait, the wife of the testator. This is extremely unusual as according to the appellant, the testator had very good relations with his wife, would at least have given her a life interest of residence in the property as is common to all the Wills executed in India.

12. DW-2 was one Sudhir Hait, grandson of Manmatha Hait. Manmatha Hait was the brother of the testator Abinash Chandra Hait. Sudhir Hait in his evidence the Trial Court had clearly stated that the appellant Ramani

had told him that her father executed a Will. He further deposed that he had instituted a criminal proceeding against the testator and a civil proceeding against the appellant in respect of certain other properties. While it is surprising that an arch rival of the appellant would come to depose in her favour. It is his evidence that has done in the case of the appellant.

13. DW-3, Rakhal Chandra Bindai, husband of DW-1. The appellant, however, admitted that it is DW-3 who managed all her legal affairs and she was acting on the instructions of DW-3. With the evidence as above, the Trial Judge went on to hold that the propounder/respondent has been able to prove the Will in question and was entitled to Probate.

14. Mr. Gopal Chandra Ghosh, learned Senior Advocate appearing on behalf of the appellants would argue that there are suspicious circumstances surrounding the Will in question. Firstly that DW-4 is not a natural choice for writing the Will since there are many other Deed Writers admitted by DW-4 within the Santipur village where the Will was executed. This Court is of the view that the evidence of DW-4 indicates that the testator knew him much before execution of the Will. The summoning of DW-4 for the purpose of execution of the Will by itself or otherwise is, therefore, not a suspicious circumstance.

15. The sheet-anchor of the appellants' argument against the Decree of Probate issued by the Trial Court is that it was manufactured after a failed attempt to secure a Barga of the land of the testator by the respondent/propounder.

16. Mr. Ghosh would argue that the propounder was going to receive 30 decimals of land under the Will in question, which was admittedly handed over to him by PW-2, his mother Kanan Bala Hait immediately after the Sradh ceremony of the testator. Badal had, therefore, no reason to apply for any Barga. He, therefore, submits that the Will was itself manufactured when the propounder realized that his application for Barga would fail.

17. However, this Court notes that the application for applying for Barga (share cropping) may have been an impulsive decision on the part of the propounder. That by itself will not negate the Will in question. The application for Barga was made on 7th December, 1994 i.e. a month after the death of the Testator.

18. While the memory of PW-2, Kanan Bala Hait as to when exactly she handed over the Will to propounder may not be fully reliable, even if it is, it could be presumed that the propounder was seeking the benefit of more than the land allotted to him under the Will in question.

19. It is now well-settled that a Barga is not available to family members of the recorded owners of the property under the provision of the West Bengal Land Reforms Act, 1955.

20. A foolish decision contrary to law can at best be called an error *but* not a suspicious circumstance. The said suspicious circumstance as argued by Mr. Ghosh, learned Senior Advocate appearing for the appellants may look very attractive but by itself cannot negate the case of the propounder, who has proved the existence and execution of the Will and the signatures of the witnesses thereon. All criteria for proof of

execution of a testamentary document under the Indian Succession Act, 1925 have been duly and evident from the depositions of PW-1 and PW-4.

21. Mr. Ghosh would argue that the next suspicious circumstance is that the testator had not made any provision for his wife in the Will in question. In most cases when the principal beneficiary is an younger person and the Will having bequeathed the property to the younger person, who may be the blood relative or a direct relative to the testator, a life interest is at least left and mentioned specifically in the Will by a testator.

22. Indeed it is surprising that the life interest in his property to stay and for upkeep is not mentioned in the Will. However, the evidence of PW-2, who would have been the beneficiary of the life interest and the other evidence on record indicate that Kanan Bala Hait was sufficiently secured from her own property, which was sold after the application for Probate was filed. In fact, Kanan Bala (PW-2) deposed in favour of the Will. It is she who should have raised objection to the Will.

23. The statement of the testator in the Will that the propounder has taken due care of herself and his wife PW-2 indicates the faith of the testator that the propounder would continue to do so, is not abnormal.

24. The main thrust of the defence in the case was that the Will was forged and the signature thereon was not that of the testator. The said argument is negated by the evidences of PW-2, PW-3 and PW-4. They have clearly proved that the Will was executed, signed and witnessed in accordance with the Succession Act. Further, the evidence of DW-2 is that the appellant Ramani told him that her father had executed a Will. This

would completely destroy the principal stand of the appellant that the testator had not executed any Will.

25. The objector has not stated that her father has executed a different Will. This leads to the only conclusion that the propounder has proved the only Will executed by the testator.

26. Having regard to the above discussions, this Court is of the view that the conclusion arrived at by the learned Trial Judge in allowing the Probate of the Will in question does not call for any interference.

27. There is, however, substance in the arguments advanced by the learned Senior Advocate, Mr. Ghosh that the Trial Judge ought to have discussed the objections and suspicious circumstance raised by the appellants in the impugned judgment. The Trial Judge has failed to address all these issues that have arisen in the evidence on record.

28. The Trial Judge has, therefore, been rather casual in considering the evidence. While this Court has agreed with the final result of the proceeding in trial, the reasoning and the discussions and the procedure adopted by the learned Trial Judge leaves much to be desired.

29. With the aforesaid observations, F.A. 362 of 2002 shall stand dismissed.

30. In view of dismissal of the appeal itself, all the connected pending applications are dismissed.

31. Interim order, if any, shall also stand vacated.

32. There will be no order as to costs.

33. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of necessary formalities.

(Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)