

17.03.2026
Ct. No. 30
SL No. **33**
MKP

CO 2042 of 2023

Jayanta Mukherjee And Anr

Vs.

Badan Chand Goswami

Mr. Sukanta Chakraborty
Mr. Anindya Haldar
Mr. Shaondeep Chakraborty
Mr. Rohit Deyashi

.....for the Petitioner

(Name not supplied)

.....for the Opposite Parties

1. The revisional application has been preferred challenging an order no.96 dated May 29, 2023 passed by the Learned Judge, Bench XI, City Civil Court, Calcutta in O.C.No.1 of 2011.

2. Vide the impugned order, the Trial Court has rejected the petitioner's prayer for handwriting expert for comparison of the signature of the testatrix, Madhabi Mukherjee, by filing an application under Section 45 of the Indian Evidence Act. On the ground that no civil case has been preferred for cancellation of the Will and also that during the evidence adduced by the attesting witnesses and another witnesses, no objection was raised by the petitioner/opposite party, herein.

3. The Trial Court has specifically recorded that the witnesses have proved their signatures in the Will in question, without any objection being raised and as such petitioners could not challenge the same at this stage.

4. It is further submitted by the Learned Counsel for the opposite party herein, that the petitioners do not have any original admitted signature of Madhabi Mukherjee, which can be compared and examined.

5. Learned Counsel for the petitioner submits that the original signature of the testatrix is with the bank and the bank has given an undertaking that they shall produce the original signature, as and when required.

6. Both the parties have relied upon the judgment of the Supreme Court in ***Ram Avatar Soni Vs. Mahanta Laxmidhar Das And Anr*** reported in ***(2019)11 Supreme Court Cases 415***.

7. The petitioner has relied upon paragraph 7,8 and 9 onwards and the opposite party relies upon paragraph 1 and submits that the signature to be examined is to be an admitted signature, which in this case is not available.

8. This Court finds that the signature with the bank is an admitted original signature and as such the same can be made available as and when the same is required to be examined. As such there is

no substance in the argument of the opposite party, herein.

9. The reasons recorded by the Trial Court that no suit for cancellation of the Will has been filed, is again a finding which has no substance and is an observation which is not in accordance with law as the Will is pending for probate and said relief can be prayed for in the Misc Case, while raising objection against grant of probate.

10. Considering the fact that the petitioner herein has challenged the Will at the stage of grant of probate, which is an earlier stage than that of revocation, the said finding of the Trial Court being not in accordance with law is also set aside.

11. The final reasoning of the Trial Court that the witnesses have proved their signatures is not again based on the materials on record, as this Court finds from the copies of the evidence recorded before the Trial Court, that the attesting witness examined has not proved the signature of the testatrix before the Trial Court.

12. It is the writer of the Will who has proved the signature but admittedly he is not an attesting witness.

13. Considering all these facts and relying upon the judgment in ***Ram Avatar Soni Vs. Mahanta Laxmidhar Das And Anr*** reported in ***(2019)11 Supreme Court Cases 415***, this Court is of the view

that the petitioners application under Section 45 of the Indian Evidence Act **is to be allowed** and the same is allowed.

14. The Trial Court shall proceed to have the original signature of Madhabi Mukherjee examined in accordance with law.

15. The impugned order 96 dated May 29, 2023 passed by the Learned Judge, Bench XI, City Civil Court, Calcutta, passed by the Trial Court is hereby set aside.

16. The Civil Revision is accordingly **disposed of**.

17. Applications, if any, connected thereto stand disposed of consequently.

18. Interim order, if any, stands vacated.

19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]