

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

**APD/1/2026
WITH TS/4/2022**

**MANASHI SENGUPTA BHADRA
VS
TAPATI SENGUPTA**

**BEFORE:
HON'BLE JUSTICE DEBANGSU BASAK
-A N D-
HON'BLE JUSTICE MD. SHABBAR RASHIDI**

For the Appellant : *Mr. Kallol Guha Thakurta, Adv.*
Mr. Ashis Kumar Dutta, Adv.
Md. Wasim Rahaman, Adv.
Mr. Dipankar Dutta, Adv.

For the Respondent : *Mrs. Suparna Mukherjee, Sr. Adv.*
Mr. Sarbajit Mukherjee, Adv.
Ms. Abhipiya Sarkar, Adv.

HEARD ON : 19.05.2026
DELIVERED ON : 19.05.2026

DEBANGSU BASAK, J.:-

1. The appeal is directed against a judgment and decree dated November 11, 2025 passed in TS/4/2022 (PLA/309/2012).
2. By the impugned judgment and decree, learned Single Judge, granted probate of the last Will and Testament of the deceased.

3. Learned Advocate appearing for the appellant refers to paragraph 7 of the application for grant of probate. He submits that, it is the case of the respondent that, during his life time the testator sold and disposed of an immovable property by a registered deed of conveyance dated May 6, 2011.
4. Learned Advocate appearing for the appellant submits that, the signature of the testator appears in such registered deed. He contends that the signature of the testator appearing in the document which was marked as Exhibit "C", claimed to be the last Will and Testament of the testator, is a forged and fabricated document. He submits that, there are discrepancies between the signatures of the testator appearing in the registered deed dated May 6, 2011 and Exhibit "C". He contends that, in view of such discrepancies, at the very minimum, the Court was required to send Exhibit 'C' to an handwriting expert for examination.
5. In response to the query of the Court, as to whether the registered deed dated May 6, 2011 was marked as an exhibit at the trial, learned Advocate appearing for the appellant submits that, the same was not so. In response to a further query of the Court, he submits that, a photocopy of the registered deed dated May 6, 2011 was shown to the witnesses at the trial. He points out that, the certified copy of the registered deed dated May 6, 2011 was obtained by the appellant subsequent to the closure of the evidence action at the trial of the suit.

6. Learned Advocate appearing for the appellant relies upon **AIR 1972 SC 608 (P.C. Purushothama Reddiar vs. S. Perumal)** and **AIR 2018 SC 5597 (Rama Avatar Soni vs. Mahanta Laxmidhar Das)** in support of the proposition that, the registered deed dated May 6, 2011 was required to be marked as an exhibit at the trial and that, the Court was required to send the signatures of the testator appearing in Exhibit “C” and the registered deed for forensic examination. He contends that the learned Single Judge erred in not doing so and therefore, the impugned judgment and decree should be set aside.
7. Learned Senior Advocate appearing for the respondent submits that, the testator executed his last Will on February 29, 2008 which was marked as Exhibit “C”. Testator expired on September 22, 2011.
8. Learned Senior Advocate appearing for the respondent submits that, the propounder applied for grant of probate of Exhibit “C” which was registered as PLA/309/2012. Upon the husband of the appellant contesting the probate proceeding, PLA/309/2012 was converted to a Testamentary Suit and was registered as TS/4/2022.
9. Learned Senior Advocate appearing for the respondent submits that, the propounder examined three witnesses being herself, and the two attesting witnesses to the Will being Exhibit “C”. She submits that, on the part of the appellant, the husband of the appellant and the custodian of the Will being Exhibit “C”, were examined as witnesses of the defendant.

- 10.** Learned Senior Advocate appearing for the respondent submits that, the husband of the appellant is the son of the pre-deceased wife of the testator. Testator married the propounder after the death of his first wife. She refers to the various questions put in cross-examination to the propounder and submits that, it came out in evidence that, there was absence of cordial relationship between the husband of the appellant and the testator during the lifetime of the testator.
- 11.** Learned Senior Advocate appearing for the respondent submits that, the two grounds which, the husband of the appellant took in the written statement were that, the Will was obtained by fraud and that, the testator did not possess the requisite mental and physical capacity to execute the Will. She contends that those two stands are contradictory to each other and cannot be taken simultaneously. It was for the husband of the appellant to choose either of the two. In any event, she contends that, neither of the two grounds taken by the husband of the appellant, was established in the trial.
- 12.** A probate proceeding being PLA/309/2012 was instituted by the respondent in respect of the last Will and Testament of the testator dated February 29, 2008. On receipt of citation, the husband of the appellant filed caveat. On the filing of the caveat by the husband of the appellant, PLA/309/2012 was converted to a contested cause and renumbered as TS/4/2022.

13. During the pendency of TS/4/2022, the husband of the appellant expired. Upon his death, the appellant was substituted as the defendant in TS/4/2022.
14. At the trial, the propounder examined three witnesses, namely, the propounder herself, and the two attesting witnesses to Exhibit "C".
15. In response to the query of the Court, learned Senior Advocate appearing for the respondent submits that, the person who is shown to be called as a witness on behalf of the propounder in paragraph 16 of the impugned judgment and decree, was actually subpoenaed by the appellant.
16. It is not disputed at the Bar that, the person in whose custody, Exhibit "C" was kept, was subpoenaed by the appellant at the trial. Therefore, the number of the witnesses that propounder examined on her behalf, is limited to three and not four, as erroneously recorded in paragraph 16 of the impugned judgment and decree.
17. Will was proved and marked as Exhibit "C" at the trial by plaintiff's witness No. 1. The propounder being the plaintiff's witness No.1 along with two attesting witnesses being plaintiff's witness Nos.2 and 3 were cross-examined *in extenso* on behalf of the appellant.
18. In her cross-examination the propounder stated that, the husband of the appellant did not visit the house of the testator frequently. The husband of the appellant studied in boarding schools. In fact, the propounder claimed that she did not know that, the husband of the appellant was married to the appellant.

- 19.** In her evidence, the appellant claimed that, the relationship between the husband of the appellant and the testator was cordial. However, no corroborative evidence appears from the record.
- 20.** We are *per se* not concerned with the relationship between the testator on one part and, husband of the appellant or the appellant on the other part. We are concerned about the grant of probate of the Will of the testator. The defences taken were that, the Will were obtained by fraud and that, the testator did not possess requisite mental and physical capacity to execute the Will.
- 21.** Two attesting witnesses of the Will are advocates of this Hon'ble Court. They were examined at the trial. Both of them, proved the execution of the Will by the testator. Both of them stated that, the Will was executed by the testator in their presence and that, each of them saw the testator executing the Will as also each of them saw the other witness sign the Will in presence of the testator and in presence of each other. Such exercises were undertaken at the request of the testator.
- 22.** Allegation of fraud perpetrated on the testator to execute Exhibit "C" remains unsubstantiated at the trial. Lack of mental and physical capacity of the testator to execute the Will also remains unsubstantiated at the trial. Our attention is not drawn to any material on record to return a finding favourable to the appellant on such score.

- 23.** The appellant contends that the signature of the testator in Exhibit “C” is a product of forgery and that, in the event, signature of the testator in Exhibit “C” is forensically examined with the signatures appearing in the registered deed dated May 6, 2011, then, it can be established that, the signature of the testator in Exhibit “C” is a product of forgery.
- 24.** With deepest of the respect, we are not in a position to accept such contention of the appellant. The original of the registered deed dated May 6, 2011 was not produced at the trial. What was produced at the trial, was a photocopy of the registered deed dated May 6, 2011. The photocopy was not marked as an exhibit. Rather, it was marked for identification. Appellant did not take any steps to introduce the registered deed dated May 6, 2011 at the trial as an exhibit.
- 25.** The question therefore, of the learned Trial Judge or us, directing an handwriting expert to examine the signature of the testator on Exhibit “C” with an admitted signature of the testator does not arise since, there is no admitted signature of the testator introduced at the trial by the appellant. As the materials on record stands there is no substance to the dispute as to the signature of testator in Exhibit ‘C’.
- 26.** It is the contention of the appellant that, the original registered deed dated May 6, 2011 is lying with the office of the Registrar of Assurances. With respect, it is for the appellant to produce the original of such registered deed dated May 6, 2011 and not for the

Court to embark upon evidence fishing exercise on behalf of any of the parties to a proceeding.

- 27.** In the factual matrix, as noted above, since the admitted signature of the testator was not introduced in evidence by the appellant, at the trial, the ratio of the decision of the Hon'ble Supreme Court rendered in ***P.C. Purushothama Reddiar (Supra)*** and ***Rama Avatar Soni (Supra)*** are not applicable.
- 28.** In such circumstances, we find no ground to interfere with the impugned judgment and decree.
- 29.** APD/1/2026 along with connected application are disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

- 30.** I agree.

(MD. SHABBAR RASHIDI, J.)