

OD-16

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM ITS TESTAMENTARY AND INTESTATE JURISDICTION
ORIGINAL SIDE**

APD/8/2025

**IN THE GOODS OF:
GIRINDRA KISHORE PAL CHOUDHURY (DEC)
-AND-
SMT. RANJUSREE PAL
-VS-
SUPARNA PAL CHOWDHURY AND ANR.**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. A. C. Kar, Sr. Adv.
Ms. Sarmila Das, Adv.

HEARD ON : 15.05.2026

DELIVERED ON : 15.05.2026

MD. SHABBAR RASHIDI, J.:-

- 1.** The instant appeal is directed against the judgment and decree passed on April 3, 2025 in TS/26/2018.
- 2.** By the impugned judgment and decree, the learned Trial Judge has dismissed an application for grant of letter of administration.

- 3.** It is submitted by the learned advocate for the appellant that, the learned Trial Court failed to appreciate the true perspective of the law governing the grant of probate and letters of administration. Learned advocate for the appellant also submits that, the Will in question was duly proved at the trial and learned Trial Judge ought to have granted letters of administration as sought. Learned advocate for the appellant also submitted that the Will in question was duly proved in terms of the provisions under Section 67 read with Section 71 of the Indian Evidence Act. Therefore, learned Trial Judge was not justified in dismissing the suit.
- 4.** It is further submitted by the learned advocate for the appellant that once a document is admitted in evidence in a suit or a proceeding, it has to be given due credence at the time of judgment. Learned Trial Judge erred in dismissing the suit and refusing the grant of letters of administration sought in the suit.
- 5.** Girindra Kishore Pal Choudhury died on April 29, 2015. He left behind the Will and Testament dated November 30, 2006 appointing his two sons, namely, Subir Pal Chowdhury and Prabir Pal Chowdhury as joint and several executors. However, one of the sons, namely, Subir Pal Chowdhury, predeceased the testator. The said Will was executed in presence of two attesting witnesses, namely, Swapan Debnath and Rathin Saha and the execution was duly identified by learned advocate Sri Somnath Chakraborty. One

of the attesting witnesses, namely, Swapan Debnath, also expired on April 22, 2016. It was further case on behalf of the petitioner that the sole surviving executor of the Will failed and neglected to present the application for grant of probate, for which, one of the beneficiaries, i.e. the plaintiff, approached the Trial Court for grant of letters of administration to the last Will and Testament of late Girindra Kishore Pal Choudhury dated November 30, 2006.

6. Citations were issued. Executor Prabir Pal Chowdhury by filing affidavit relinquished his executorship. One Smt. Suprana Pal Chowdhury, wife of deceased executor Subir Pal Chowdhury, also lodged a caveat in the proceeding. According to the case made out in the caveat, it was stated that the testator never expressed any willingness during his lifetime to execute any Will. The Will in question was said to be a product of fraud and evil machination of the propounder.
7. Considering the pleadings put in by the parties, learned Trial Court took up the proceeding for disposal. Learned Trial Court, on the basis of the pleadings of the parties, framed as many as six issues for adjudication, which are as follows:

- “1. Whether the instant will is the last will and testament of the deceased Girindra Kishore Pal Choudhury?*
- 2. Whether the Testator was physically fit and mentally alert at the time of execution of the will?*

3. Whether the will was properly executed in terms of law?

4. Whether the execution of the will was tainted with suspicious circumstances?

5. Whether the will was got executed by practicing fraud and exercise of evil machination by the propounder of the will?

6. Whether letter of administration can be granted, as prayed for?”

- 8.** Issue no.1 – Whether the instant Will is the last Will and Testament of the deceased Girindra Kishore Pal Choudhury? – was decided in favour of petitioner. Issue nos. 2, 3, 4 and 5 were taken up together by the learned Trial Court. We have noted hereinabove that it was the case of the caveator that the Will in question was never intended to be executed by the testator and it was handiwork of fraud. In order to prove the execution of the Will, the petitioner examined himself as well one of the attesting witnesses. Section 63 of the Indian Succession Act, 1925 envisages that Will has to be attested. It would be apposite to set out the provisions of Section 63 –

“63. Execution of unprivileged Wills.— *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 other 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 or affix his mark to the Will or has seen some other person 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.”

9. Section 68 of the Indian Evidence Act lays down as to how a document which is required to be attested has to be proved. Section 68 of the Indian Evidence Act reads as follows:

“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 at least 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 with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]”

- 10.** Section 69 of the Indian Evidence Act draws an exception to the Rule enunciated under Section 68 of the Indian Evidence Act. Section 69 of the Indian Evidence Act reads as follows:

“69. Proof where no attesting witness found. *If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”*

- 11.** Section 71 of the Act of 1872 lays down the principle as to how a document required to be attested has to be proved, if the attesting witness denies or does not recollect the execution of such document. Section 71 of the Indian Evidence Act provides:

“71. Proof when attesting witness denies the execution. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.”

12. In the impugned judgment and order it was argued on behalf of the plaintiff that the attesting witness was examined as a witness in the suit who did not recollect the attestation of the Will. For the aforesaid reason, the plaintiff examined another witness who was acquainted with the signature of the testator and the Will was proved in accordance with the provisions of Section 71 of the Indian Evidence Act.
13. Learned Trial Court noted in the impugned judgment and order that the witness acquainted with the signature of the testator was examined as PW-1 and she testified that the Will was signed by Girindra Kishore Pal Choudhury in her presence. She identified the signature of the testator and resultantly the Will was admitted in evidence at the trial. Similarly, another witness Birendra Chandra Chakraborty also stated in his examination-in-chief that he was acquainted with the signature of the testator and he also identified such signature appearing on the alleged Will. In his cross-examination he did not agree to a suggestion confronted to him that the testator signed the same in his presence and that of the witnesses. He categorically stated in his cross-examination that he

signed on the Will as per the dictate of one Somnath Chakraborty, Advocate after the said learned Advocate Somnath Chakraborty signed the Will. The impugned judgment also noted the answer by such witness that when the learned Advocate Somnath Chakraborty and himself signed on the Will, the testator Girindra Kishore Pal Choudhury was not present there. Learned Trial Judge has noted in the impugned judgment that time and again similar questions were put to the witness and he stated in such cross-examination that the testator signed on the Will in his presence. It was also noted that the witness stated categorically that only the learned Advocate Mr. Somnath Chakraborty was present at the *serishta* at the time when he signed on the Will.

- 14.** So far as the evidence of attesting witness Mr. Rathin is concerned, from the purport of the examination of such witness it transpired that the same witness did not deny or fail to recollect the execution of the document as required under Section 71 of the Indian Evidence Act. According to the evidence of such attesting witness, he simply did not see the testator putting his signature on the Will in his presence. He has also not stated in his cross-examination that he received personal acknowledgement of the testator while putting his signature on the Will in question. Learned Trial Court in the impugned judgment has noted such facts and came to the conclusion that it was not a case of denial or of lack of recollection.

Simply, the case falls in a situation where a document which is required to be necessarily attested was executed without such attestation.

15. On such ground learned Trial Court proceeded to decide issue nos.2, 3, 4 and 5 against the petitioner and ultimately proceeded to dismiss the suit.
16. In **G.M. Shahul Hameed (*supra*)** the Hon'ble Supreme Court was considering the admissibility of a document which was not properly stamped. It was submitted by the learned Advocate for the petitioner that once a document has been admitted in evidence, the same cannot be questioned later on. In such case, the Hon'ble Supreme Court was of the view that when a document's admissibility is questioned due to improper stamping, it must be decided immediately when presented as evidence. A decision rendered on such issue cannot be revisited subsequently by the same Judge in the same proceeding.
17. **G.M. Shahul Hameed (*supra*)** cannot be read to mean that in a probate proceeding, once a Will is tendered and marked as exhibit in evidence, the attestation as required under law, stands proved. Notwithstanding the Will being marked as an exhibit, at the trial, learned Trial Judge is required to assess as to the evidentiary value of such Will particularly the due execution thereof.

- 18.** In the instant case, as evident from the impugned judgment and decree, the petitioners have not been able to prove that the Will was executed by the deceased testator and the deceased testator had the intention to execute such Will.
- 19.** In such circumstances, we find no ground to interfere with the impugned judgment and decree.
- 20.** Accordingly, APD/8/2025 along with the connected application, if any, is disposed of, without any order as to costs.

(MD. SHABBAR RASHIDI, J.)

- 21.** I agree.

(DEBANGSU BASAK, J.)