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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APD/6/2026

KAMAL KUMAR MITRA
VS
KUMKUM BISWAS AND ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
-AND-
The Hon'ble JUSTICE ARYAK DUTT

For the Appellant	:	Mr. Dhruba Ghosh, Sr. Adv. Ms. Debjani Ghosh, Adv. Mr. Bhaskar Mukherjee, Adv. Ms. Nafisa Yasmin, Adv.
For the Respondents	:	Mr. Suman Kr. Dutt, Sr. Adv. Mr. Sarosij Dasgupta, Adv. Ms. Subhra Das, Adv.
HEARD ON	:	05.10.2026
DELIVERED ON	:	05.10.2026

DEBANGSU BASAK, J.:-

1. Terms of Settlement filed in CS No. 90 of 2008 submitted in Court in this proceeding be kept with the record.

2. Appeal is directed against the impugned judgment and decree dated February 24, 2026 passed in Testamentary Suit No. 1 of 2007 arising out of PLA No. 280 of 2005.

3. By the impugned judgment and decree, learned Single Judge refused to grant probate in respect of the Will of the deceased.

4. Learned Senior Advocate appearing for the appellant submits that, the learned Trial Judge erred in not granting probate of the Will of the deceased. He submits that, one of the attesting witnesses explained himself duly in the re-examination. He refers to the questions put to such attesting witness. He submits that, on a purposive reading of the questions and answers given by attesting witness, there can be no room of doubt that the Will was executed by the deceased in presence of the attesting witness and in presence of the other attesting witnesses. Consequently, he submits that, the execution of the Will was duly proved at the trial. The probate Court erred in refusing to grant probate.

5. Learned Senior Advocate submits that, there was a suit for partition being CS No. 90 of 2008 pending between the parties during the pendency of the appeal. He submits that, such suit was decreed in terms of a Terms of Settlement by the order dated September 29, 2026. He submits that, the disputes between the parties stands settled. He submits that, the grant of probate will be in aid of the settlement arrived at between the parties and will give effect to such Terms of Settlement.

6. Learned Advocate appearing for the respondents submits that, since, the probate Court does not decide title to an immovable property, grant of probate be considered in terms of the provisions of Indian Succession Act, 1925.

7. We find from the records that, the appellant before us applied for grant of probate of the Will of the deceased dated February 27,

2001. Such Will was registered with the Registrar of Assurances on February 27, 2001.

8. The Testator expired on June 3, 2005. Subsequent to his death, the application for grant of probate was filed. Caveat was lodged. Probate proceeding was treated as a contentious cause. Probate proceeding being PLA No. 280 of 2005 was transposed to TS No. 1 of 2007 consequent upon the probate proceeding being treated as a contentious cause.

9. In the testamentary suit, the appellant examined three witnesses, namely, one of the attesting witnesses, the propounder and one officer at the office of the Registrar of Assurances. The respondent examined three witnesses.

10. The attesting witness, at several places, initially stated that, the Will was executed on February 28, 2001. On such defect being discovered, the attesting witness was re-examined. On re-examination, the attesting witness stated that the date of execution of the Will was the same date as that of the registration of the Will which is February 27, 2001. We find that, the initial discrepancies were in question nos. 14, 21, 24-28, 74, 171, 199-202. On re-examination, the attesting witness clarified the date of execution to be the date of registration in question nos. 193-203.

11. The Will is a registered Will. Officer of the registering authority established that, the Will was presented for registration on February 27, 2001. The attesting witness on re-examination clarified that, the date of execution of the Will was February 27, 2001. Throughout, the

attesting witness established that, the deceased initially set and subscribed his signature on the Will and requested the attesting witness to set and sign the Will which he did. He also stated that, the other attesting witnesses signed in his presence at the request of the deceased. In our view, therefore, execution of the Will stands duly established by the attesting witness. There is no suspicious circumstance in the execution of the Will on the ground of the so called discrepancy of the date in execution of the Will in view of the fact that the Will was executed on February 27, 2001 and registered on the same date.

12. In such circumstances, the probate of the Will of the deceased dated February 27, 2001 which is registered on the same date is granted.

13. APD No. 6 of 2026 is allowed, without any order as to costs.

(DEBANGSU BASAK, J.)

14. I agree.

(ARYAK DUTT, J.)

KB
AR(CR)