IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY & INTESTATE JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Sugato Majumdar

PLA/234/2022

IN THE GOODS OF BINA DEVI BAJORIA, DEC

For the Executor	:	Mr. Jishnu Chowdhury, Sr. Adv. Mr. Ratul Das, Adv. Mr. A. Agarwal, Adv. Ms. Shatabdi Kundu, Adv.
Hearing concluded on	:	05.10.2026
Judgment on	**:**	**08.10.2026**

Sugato Majumdar, J.:

This is an application praying for grant of Probate of the last Will and Testament of the deceased Bina Devi Bajoria, the Testatrix herein.

The Testatrix was a Hindu, governed by Mitakshara School of Hindu law. She expired on 30/07/2021. Her place of death was 24/2, Alipore Road, Kolkata – 700027. Prior to her death she executed one Will, stated to be the last Will and Testament, on 10/06/2021. She left behind her three daughters, named in the application itself.

On death of the Testatrix this application was filed by the Executrix, praying for grant of probate of the last Will and Testament dated 10/06/2021, as aforesaid.

Citations had been issued and one caveat had been lodged. However, the same was discharged on hearing the counsels of the parties. Thereafter, the proceeding became non-contentious.

One of the attesting witnesses deposed and stated that the Will had been executed by the Testatrix in presence of the said attesting witness and the other; the Testatrix also executed the Will in presence of the attesting witnesses. It was further deposed that the Testatrix was physically fit and mentally alert at the time of execution of the Will, the Testatrix was physically fit and mentally alert.

The Executrix did not come forward to examine herself. Even though, execution of this Will was proved, it is not known whether this is the last Will and Testament of the Testatrix. The Executrix could have clarified the same since she is one of the daughters of the Testatrix, but she failed to do so. The attesting witness was not a family member. It is only a family member who can say with certainty whether the Will was the last one. This Court, therefore, could not get opportunity to hear the testimony of the Executrix. The attesting witness did not disclose the date of death. A photo copy of death certificate was produced. Original death certificate has not been produced.

Mr. Das, the Learned Counsel for the Petitioner submitted that in absence of any witness, this Court can presume genuineness of the death certificate under Section 79 of the Indian Evidence Act, 1872 alternatively, under Section 78 of the BSA, 2023.

The argument is not acceptable. Firstly, what is before this Court is a photocopy of the death certificate. Presumption under Section 79 applies in case of original certified copy, not in case of the copy of the same. There is no reason apparent why the best evidence being the original death certificate has not been

produced. There is no apparent reason why the Executrix shunned to appear before this Court to examine herself.

Probate Court is a court of conscience. There is no cavil on this point. In the given factual matrix, as stated above, this Court is not inclined to grant probate of the said last Will and Testament of the Testatrix.

The instant application is disposed of as dismissed on merit.

(Sugato Majumdar, J.)