

P. L. A. No. 151 of 2011

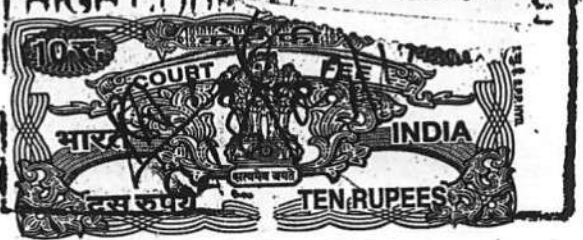


IN THE HIGH COURT AT CALCUTTA

TESTAMENTARY AND INTERSTATE JURISDICTION

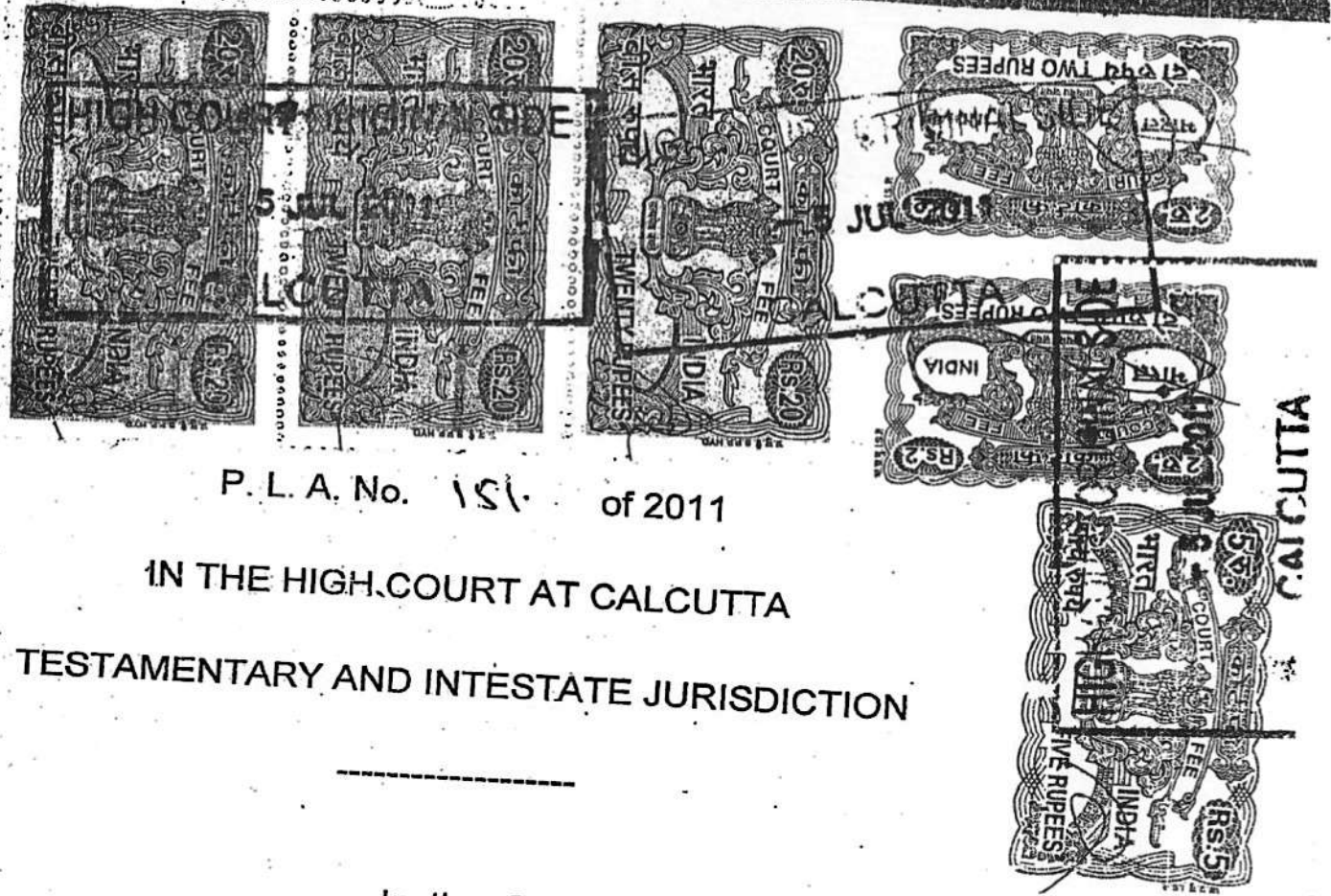
In the Goods of: Smt. Amila Bala Gain,  
lately residing at Village: Dhanyakuria,  
Police Station: Basirhat, Dist: 24  
Parganas (North), a Hindu inhabitant  
deceased.

40-18/2012



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P. L. A. No. 151 of 2011

IN THE HIGH COURT AT CALCUTTA

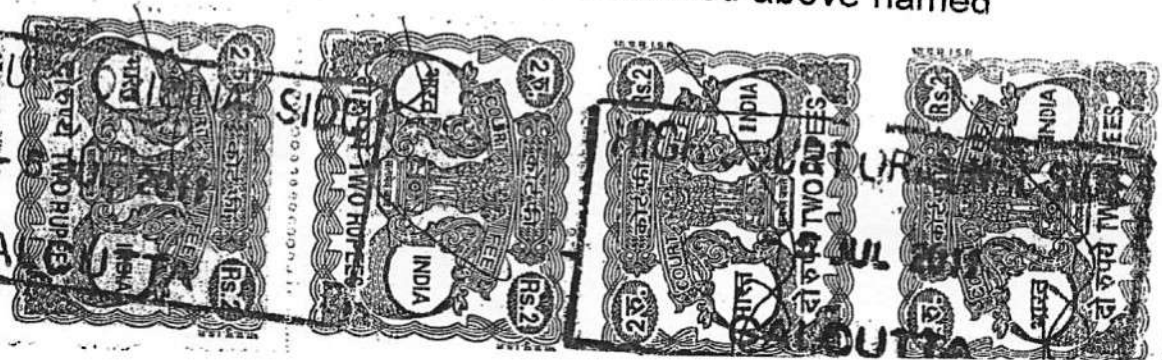
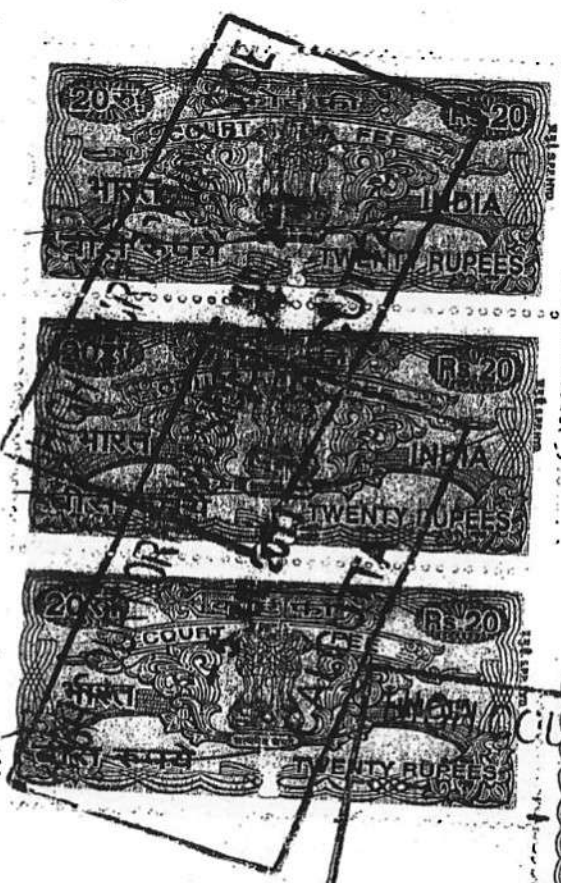
TESTAMENTARY AND INTESTATE JURISDICTION

In the Goods of: Smt. Amila Bala Gain,  
lately residing at Village: Dhanyakuria,  
Police Station: Basirhat, Dist: 24  
Parganas (North), a Hindu inhabitant  
deceased.

To:

The Hon'ble Mr. Jainarayan Patel, Chief Justice and His Companion  
Justices of the Hon'ble Court.

The humble petition of Shyamal Krishna  
Gain also known as Shyamal Gaine, son  
of Late Bijay Krishna Gain and residing at  
90B, Shyambazar Street, Kolkata-700  
005, the executor named in the Will and  
Testament of the deceased above named



DA

dated 25<sup>th</sup> day of October, 1992 most respectfully: -

**SHEWETH:**

1. That the said Smt. Amila Bala Gain, deceased (hereinafter referred to as the "**said deceased**") was during her life time an inhabitant of Village: Dhanyakuria, Police Station: Basirhat, Dist: 24 Parganas (North) and governed by <sup>Dayabhaya</sup> Mitakshara School of Hindu Law.

2. The said deceased died at Village: <sup>P.P.O.</sup> Dhanyakuria, Police Station: Basirhat, Dist: 24 Parganas (North), in the State of West Bengal on 30<sup>th</sup> May, 1999, after having made her last Will and Testament on 25<sup>th</sup> day of October, 1992 in the English language and character. The original copy of the Will dated 25<sup>th</sup> day of October, 1992 is annexed hereto and marked with the letter "A". A copy of the death certificate evidencing the death of the said deceased on the date above mentioned is annexed hereto and marked with the letter "B".

3. By the said Will dated 25<sup>th</sup> day of October, 1992, the said deceased appointed his son Shri Shyamal Krishna Gain, as the executor thereof.

4. The said deceased duly executed the said Will dated 25<sup>th</sup> day of October, 1992 and the signature of the said deceased was duly attested by one Sri Shyamal Gaine son of Late Bijay Krishna Gain and residing at 90B, Shyambazar Street, Kalcutta - 700 005 and another Sri Samir Kumar Bhattacharjee, son of Sri Harendranath Bhattacharjee, and residing at Subhas Pally, Chandannagar, Hoogly-712 138. Due execution of the said Will is proved by affidavits of each of the two said attesting witnesses namely Shyamal Gaine and Samir Kumar Bhattacharjee, respectively affirmed on the June 28, 2011.

The said affidavits of Shyamal Gaine and Samir Kumar Bhattacharjee, respectively are *affirmed and filed herewith and also by their declarations made at the foot of the petition.* annexed hereto and collectively marked with the letter "C".

5. That the said deceased died leaving various moveable and immovable properties situated both within and outside the jurisdiction of this Hon'ble Court.

6. The said deceased died leaving the following heirs who would have inherited <sup>her</sup> ~~his~~ estate under the Hindu Succession Act, 1956 and no one else had he died intestate and no one else-

I) Kanchan Krishna Gain also known as Kanchan Gaine, son of the deceased above named and residing at 90B, Shyambazar Street, Kolkata - 700005.

II) Shyamal Krishna Gain also known as Shyamal Gaine, son of the deceased above named and residing at 90B, Shyambazar Street, Kolkata - 700005. (*Executor*)

III) Mrs. Mahua Gaine, wife of Late Dwipen Krishna Gain and daughter-in-law of the deceased above named and residing at 90B, Shyambazar Street, Kolkata - 700005.

IV) Abhijit Gaine, son of Late Dwipen Krishna Gain and grandson of the deceased above named and residing at 90B, Shyambazar Street, Kolkata - 700005.

Amal Krishna Gain, the eldest son died as a bachelor on 25<sup>th</sup> June 2005 after the death of the <sup>testatrix</sup> ~~testator~~, Dwipen Krishna Gain, the husband of Mahua Gaine and father of Abhijit Gaine who was also one of four sons of the deceased predeceased the <sup>testatrix</sup> ~~testator~~ on 2<sup>nd</sup> August 1992. The copies of the death certificates evidencing the

death of the said Amal Krishna Gain and Dwipen Krishna Gain together with a Genealogical Table are annexed hereto and collectively marked with the letter "D". The aforesaid living heirs of the said deceased have no objection to the grant of the Probate of the said Will and Testament being Annexure "A" hereto, as will

*8* appear from affidavits of the said heirs affirmed on June 28, 2011 *and filed herewith.*

The said affidavits are annexed hereto and collectively marked with the letter "E".

7. The particulars of the estate of the said deceased so far as your petitioner have been able to ascertain are set out in the Affidavit of Assets affirmed by your petitioner on the June 13, 2011. The net value of the assets, which are likely to come in your petitioner's hand amounts to Rs. 60,00,000/- and the gross value thereof is Rs. 60,00,000/-. The Affidavit of Assets is annexed hereto and marked with the letter "F".
8. Your Petitioner has paid the maximum ad valorem fee payable on the valuation, as it will appear from the Certificate of the Registrar (Original Side) annexed herewith and marked with the letter "G".
9. So far as your petitioner has been able to ascertain and/or is aware of there are no properties and effects other than those specified in

the said affidavit of assets. In case of any other properties and effects of the said deceased coming into your petitioner's hands your petitioner undertakes to pay the additional ad-valorem duty payable in respect thereof.

10. To the best of your petitioner's belief no application has been made to any other Court for the grant of the Probate of the said will, of the estates, credits and effects of the said deceased intended to have effect throughout the Union of India and no intimation has been received by this Hon'ble Court from any other High Court or any District Court of any grant of Probate of the Will, properties and credit of the said deceased with effect throughout the whole of the Union of India as will appear from the certificate issued by the Learned Registrar of this Hon'ble Court which is annexed hereto and marked with the letter "H".

⑥

11. Your petitioner states that no Estate Duty is payable in view of the amendment in the Estate Duty Act.

12. Your petitioner submits that this Hon'ble Court be pleased to grant Probate ~~annexed with a copy of the said will thereto~~ of the said will and Testament of the said deceased dated 25<sup>th</sup> day of October, 1992

to your petitioner as the Executor with effect throughout the Union of India. *State of West Bengal.*

Your petitioner, therefore, humbly prays

Your Lordships for an order:

(a) That the Probate of the last Will and Testament dated 25<sup>th</sup> day of October, 1992 of the deceased above-named be granted to your petitioner as the Executor thereof

with effect throughout the Union of India. *State of West Bengal.*

(b) That such further or other order or orders be made and/or direction or directions be given as this Hon'ble Court may deem fit and proper.

And your petitioner as in duty bound shall ever pray.

S. Katarani & Co  
By Mr. Ratan Katarani  
Proprietor

Syamal Krishna Gain also known  
as Syamal Gain

Petitioner's Advocates,  
10, Old Post Office Street,  
Room # 34, First Floor  
Kolkata - 700 001.

⑧ A

Verification

I, Shyamal Krishna Gain also known as Shyamal Gaine, the petitioner above named, do hereby declare and say that the statements contained in paragraphs 1 to 11 of the foregoing petition are true to best of my information and belief and the rest are my humble submissions before this Hon'ble Court.

I sign this verification this 30<sup>th</sup> day of June, 2011 at Court premises  
in the High Court at Calcutta.

*Shyamal Krishna Gain also known as  
Shyamal Gaine*

Declaration

I, Shyamal Krishna Gain, also known as Shyamal Gaine son of the deceased above named, aged about 60 years, by religion Hindu, by occupation: retired and residing at 90B, Shyambazar Street, Kolkata-700 005, one of the attesting witnesses to the Will and Testament of the deceased above named dated 25<sup>th</sup> day of October, 1992 as mentioned in the above petition do hereby declare and say that I was present and saw the <sup>testatrix</sup> Testator *and in the presence of each other.* executing the said last Will and Testament in my presence. That the <sup>testatrix</sup> Testator, at the time of execution was in a fit state of mind and body to execute the Will and to fully appreciate what he was doing as to the disposition of the property.

Dated this 30<sup>th</sup> day of June, 2011 at Court premises in the High Court  
at Calcutta.

*Shyamal Krishna Gain also known as  
Shyamal Gaine*

Declaration

I, Samir Bhattacharya, son of Sri Harendranath Bhattacharya, aged about 47 years, by faith: Hindu, by occupation: Service and residing at Subhas Pally, Chandannagar, Hooghly - 712 138, one of the attesting witnesses to the Will and Testament of the deceased above named dated 25<sup>th</sup> day of October, 1992 as mentioned in the above petition do hereby

*R* declare and say that I was present and saw the <sup>testatrix</sup> Testator executing the said last Will and Testament in my presence <sup>and in presence of each other.</sup> That the <sup>testatrix</sup> Testator at the time of execution was in a fit state of mind and body to execute the Will and to fully appreciate what he was doing as to the disposition of the property.

Dated this 30<sup>th</sup> day of June, 2011 at Court premises in the High Court at Calcutta.

Samir Bhattacharya

68/11  
27/7/11  
28/7/11

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HIGH COURT ORIGINAL SIDE  
- 5 JUL 2011  
CALCUTTA

W I L L

THIS IS THE LAST WILL AND TESTAMENT OF ME,  
AMILA BALA GAIN, wife of Late Bijay Krishna Gain, by  
faith : Hindu, by occupation : Housewife and resident of  
Village : Dhanyakuria, Police Station : Basirhat,  
District : 24-Parganas (North) and at present residing  
at 90B Shyambazar Street, Calcutt-5, in the State of  
West Bengal.

1. I do hereby cancel and revoke all Wills and  
codicils and other Testamentary dispositions  
made by me at any time heretofore and declare  
this to be my last Will and Testament in respect  
of the property hereinafter described.
2. I hereby appoint my Shyamal Krishna Gain and resi-  
ding at 90B, Shyambazar Street, Calcutta-5 as  
the Executor of this my Will, who shall be  
entitled to take probate of this Will after  
my death from the Hon'ble High Court at Calcutta  
or from any other Competent Court without  
furnishing any security.

(12/11)

অমিলা গান স্মরণে

3. I am seized and possessed of and/or well and sufficiently entitled to ALL THAT Premises No. 90B, (formerly 134), Shyambazar Street, Calcutta-5, Police Station : Shyampukur, within the local limits of Calcutta Municipal Corporation, hereinafter referred to as the "said property", as more fully described in Part-I of the Schedule hereunder written, free from all encumbrances whatsoever.
4. I am also seized and possessed of and/or well and sufficiently entitled to ALL THAT Residential building standing on piece and parcel of land situate at Village Dhanyakuria, Police Station : Basirhat, District : 24 Parganas (North), which is also described as the "said property" as more fully described in Part-II of the Schedule hereunder written.
5. My son Dwipen Krishna Gain recently died on 2nd August 1992 leaving behind him, his widow Mahua Gain and his minor son Abhijit Gain.
6. I give, devise and bequeath all my right, title and interest in respect of the said property as more fully described in Part -I and Part - II of the Schedule written hereunder to my three surviving sons, namely Amal Krishna Gain, Kanchan Krishna Gain and Shyamal Krishna Gain and my daughter-in-law

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the said Mahya Gain and my grandson Abhijit Gain.

7. The said legatees shall have full and absolute right in respect of the said property.
8. I am making this Will out of my free will, without any coercion, fraud or misrepresentation practiced upon me from any quarter whatsoever and after fully understanding its contents.
9. I am in perfect sound mind and sense in making this Will in favour of the said legatee.

THE SCHEDULE ABOVE REFERRED TO :

PART-I

ALL THAT the piece or parcel land measuring an area of 4 Cottahs, 5 Chittacks and 37 Square Feet, be the same a little more or less, Together With partly one storied partly two storied brick built meassuage or dwelling house standing thereon, situate lying at or being Premises No.90B (formerly 134), Shyamvazar Street, in the then town of Calcutta-5, Police Station : Shyampukur, within the local limits of Calcutta Municipal Corporation and butted and bounded as follows :

- |              |   |   |
|--------------|---|---|
| ON THE NORTH | : | By Premises No.91, Shyambazar, Street and partly by Premises No.89, Shyambazar Street,                                |
| ON THE EAST  | : | By the other portions of the said premises no. 90, Shyambazar Street.   |
| ON THE WEST  | : | By partly by the Premises No.91, Shyambazar Street, partly by no.1, Hemkar Bye Lane and partly no.2, Hemkar Bye Lane. |
| ON THE SOUTH | : | By other portion of No.90 Shyambazar Street.  |

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PART-II

ALL THAT Residential building standing on piece and parcel of land situate at Village : Dhanyakuria, Police Station Basirhat District : 24-Parganas (North) .

IN WITNESS WHEREOF I, the said AMILA BALA GAIN, have hereunto set and subscribed my hand on this 25<sup>th</sup> day of October, 1992.

Signed by the said AMILA BALA GAIN the TESTATOR abovenamed, at Calcutta in our presence, all being present at the same time in her presence and in the presence of one another we subscribe our respective name addresses and occupations :

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Read Over and Explained  
by me in Bangli  
Byamal Gaine

Byamal Gaine

S/O Bijoy Krishna Gaine

90B, Sheyambazar Street

Samir Bhattacharya

Samir Kumar Bhattacharya

S/O Harendra Nath Bhattacharya

Chandranagore, Subhaspally  
Hooghly

RS 1284 - usual rates  
of annam  
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R.P.  
Per

N.C.

Translation of Bengali  
Signature with will - 28 folios  
4/1/2012

No caveat - Dr  
9/12/2011  
- do - S. Mandal  
do - Dr  
15/12/2011

P.L.A. No. 151 of 2011

IN THE HIGH COURT AT CALCUTTA

TESTAMENTARY AND INTESTATE

P/W

W.B.

JURISDICTION

Cor: J. P. Mukerjee (9)

29/11/11 Opp → Return - 15/12/11

15  
17.1.2012

In the Goods of: Smt. Amila Bala Gain,  
lately residing at Village: Dhanyakuria,  
Police Station: Basirhat, Dist: 24  
Parganas (North), a Hindu inhabitant  
deceased.

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PETITION

Filed on the 9th day of August 2011



P(W) issued on 17.1.2012

P(W)  
15.12.2011

R.P. 17/1/2012  
Registrar

REGISTRAR  
HIGH COURT, O.S.  
CALCUTTA  
S. Kakrania & Co.  
Advocates  
10, Old Post Office Street,  
Room # 34, First Floor,  
Kolkata - 700 001  
M - 9830047413

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