

In the Court of the Learned 2nd ADJ at Bhubaneswar

OS-19/16 (Probate)

Sumanta Sinha

-18- — Petitioner

Sefali De & Ors.

— Opposite Parties

Pt Dt- 14/6/22

Pt No- 8382/22

C-95



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- Date of Application for Copy 14/6/22
1. Date fixed for notifying the Requisites Stamp- 18/6/22
 2. Date for delivery of the Requisites Stamp- 18/6/22
 3. Date on which the copy was ready to delivery- 18/6/22
 4. Date of making over the copy to the applicant 18/6/22
 5. Cost of copy- Rs 16/-
- Number of Xerox Papers use-

1+7 Pages

Order no. Nil dated 11.05.2022

Petitioner files hazira through lawyer.

Today is fixed for delivery of judgment.

Judgment is ready for delivery in separate 6 pages.

Judgment delivered in open court. Substance of judgment is

Hence it is,

Ordered

that the suit be and the same is decreed on contest with costs.

Petitioner do get a Probate of the last WILL of testator Pushpa Rani Dey executed on 18.11.2009 annexed with a copy of WILL.

Office is to prepare the documents of Probate annexed with a copy of the WILL after realisation of requisites stamp duty.

Original WILL be kept in the safe custody of the court in a sealed cover for ever.

The petitioner is directed to submit a report of compliance after execution of the Estate of the deceased mentioned in the schedule, as per direction of the WILL within six months from the date of getting Probate.

Dictated & Corrected by me,

ADJ. 2nd Court, BKP.

Additional District & Sessions Judge
2nd Court, Barrackpore,
North 24 Parganas

Additional District Judge,
2nd Court, Barrackpore,
North 24 Parganas.
Additional District & Sessions Judge
2nd Court, Barrackpore,
North 24 Parganas

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O.S. 19 of 2016 [Misc. 96 of 2014 (Probate)]
West Bengal Form No. 3702.

HIGH COURT FORM NO. (J) 2
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT: NORTH 24 PARGANAS

IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS
JUDGE
2nd COURT, BARRACKPORE.

Present: Mr. D. N. Roy Barman
Additional District Judge,
2nd Court, Barrackpore.



Judgment Dated: 11th day of May, 2022

Original Suit No. 19 of 2016
Misc. Case- 96 of 2014

Smt. Sunanda Sinha ...Applicant

Versus

Smt. Shefali Dey Opposite party

11/05/22
Smt. Shefali Dey
This suit coming on for final hearing on 16.02.2022 & 30.04.2022
In the presence of

Ms. A. Shaw Advocate for the Appellant.
Sri H. M. Sengupta..... Advocate for the opposite party.

This is an Application for granting of Probate of last WILL of deceased testatrix
Pusha Rani Dey.

Fact of the case in nutshell is that one Pusha Rani Dey was the owner and
possessor of the schedule property and on such property a multi storied building
was erected with the help of developer Maa Jagadharti Construction, in which

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O.S. 19 of 2016 [Misc. 96 of 2014 (Probate)]
she retained some portion of the building in her personal possession. She lived in her said shared portion of the building till her life time. During her life time she executed her last testamentary work by way of execution of WILL in respect of her shared portion of the house together with common user of amenities and passage of the said building in favour of her daughter Sunanda Sinha on 18.11.2009. The petitioner Sunanda Sinha was appointed as the executrix of the said WILL.

Thereafter deceased died on 09.01.2010 and after death of the deceased the petitioner being the executor of the WILL has applied for grant of probate in respect of the last WILL of the testator before the District Delegate at Barrackpore being Misc. Case No. 96 of 2014.

Upon service of notice one of the legal heirs of deceased namely Smt. Shefali Dey expressed her intention to contest the claim of the petitioner.

The Ld. District Delegate, Barrackpore referred the case to the Court of Ld. District Judge, North 24 Parganas at Barasat as a contentious proceeding.

Ld. District Judge, North 24 Parganas at Barasat registered the application for probate as a Other Class Suit being No. O.S. 19 of 2016 and transferred the suit to this court for disposal.

O.P Smt. Shefali Dey, who is daughter in law of the deceased testator was contesting the suit by filing a written objection denying all materials facts and contending inter alia that the original WILL is forged and manufactured one and it was executed by exercising undue influence. Finally O.P prayed for rejection of the prayer for granting probate of the WILL in question.

Upon the pleadings of the parties following issues were framed by my predecessor in my office. For proper adjudication of the dispute those are need to be re-casted as below.

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1. Is the suit maintainable in its present form as well as in law?
2. Had the testator voluntarily executed the WILL in a fit state of mind and health?
3. Whether the WILL has been obtained by practicing fraud or undue influence?
4. Is the petitioner entitled to get a Probate of the WILL in question?
5. To what other relief, if any, petitioner is entitled?

During pendency of the trial the contesting O.P died after full cross examination of P.W.1 and part cross examination of P.W.2. O.P died issue less and her husband pre deceased her, so there was no legal heirs of O.P. Accordingly on the prayer of petitioner name of the O.P was expunged from the cause title of the plaint.

Decision with reason

During trial one of the attesting witness of the WILL namely Swayambhu Narayan Bera has been examined as P.W.1. The petitioner has been examined as P.W.2 but her cross examination by O.P could not be concluded due to death of O.P without leaving any legal heirs.

During trial documents like death certificate of deceased has been admitted into evidence as Exhibit-3, original aadhaar card of petitioner was marked as Exhibit-2. Original WILL has been proved and marked as Exhibit-1 and signature of P.W.1 on the original WILL has been marked as Exhibit-1/1. Public notice by way of publication in a regional vernacular daily newspaper under named and style "Aajkal" issue dated 17.03.2022 has been admitted into evidence as Exhibit-4.

The scribed who prepared the WILL has not been examined.

Perused the entire case record and evidence adduced.

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Issue No. 1

This is an application for grant of probate of last WILL of deceased Pushpa Rani Dey filed by the executor cum beneficiary of the WILL together with presentation of original WILL and death certificate of the testator Pushpa Rani Dey. Thus legal requirement for filing of probate of the WILL has been duly fulfilled. As per petition deceased breathed her last at 26, Gorakhha Basi Road under P.S. DumDum which is within the jurisdiction of this District Court.

Service of notice upon the legal heirs of the deceased testator along with newspaper citation has been duly made. So the application is well maintainable.

Issue no.2 & 3

It appears from the death certificate of Pushpa Rani Dey, the testator died on 09.01.2010. Original WILL Exhibit-1 was executed on 18.11.2009 and it was placed before the Registrar for registration on the same day. Registration was done on the next day i.e. 19.11.2009. Attesting witness of the Exhibit-1 are (1) Namita Sinha and (2) Swayambhu Narayan Bera.

One of the attesting witnesses of the WILL proved the execution and attestation of the WILL. It appears from the evidence of P.W.1 that he has seen the testator to execute last WILL of testator Pushpa Rani Dey. P.W.1 also proved the fact that at the time of execution of the last WILL testator Pushpa Rani Dey was sound in mind and health. P.W.1 also proved a fact of attestation of WILL by deposing that he has seen the executor to put signature on each page of the WILL and thereafter he signed on the WILL as one of the attesting witness and such fact was seen by the executor.

From the cross examination of P.W.1 it is found that he was suggested by asking some question regarding the health condition of testator at the time of execution of the WILL but he promptly answered to the questions put to him in the negatives. It appears from the cross examination of P.W.1 that the testator was neither suffering from hearing problem nor suffering from eye side problem at the time of execution of the WILL.

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It also appears from the evidence of P.W.1 that the testator had an independent advice from the lawyer of the testator namely Diptendra Nath Sen, Advocate before execution of the WILL. Said lawyer of the testator prepared the WILL. P.W.1 stated that after preparation of the WILL the lawyer of the testator herself gone through the contents of the WILL and being satisfied with the recitals of the WILL she signed on each page of the WILL by putting her own signatures. P.W.1 also stated that he together with another attesting witness Namita Sinha also gone through the contents of the WILL and thereafter signed on the WILL as attesting witnesses.

Therefore P.W.2 also stated a fact that the testator was her mother and mother executed a WILL in respect of the property left by her mother and in such WILL she was made an executor of the WILL. Original WILL was produce by P.W.2. Original WILL is a register instrument which was prepared by a lawyer as per advice of the testator.

From the evidence as well as on inspection of the WILL I find that the executor Smt. Pushpa Rani Dey executed her last WILL on 18.11.2009 in a sound state of health and mind. There was no undue influence from any corner. P.W.2 validly proved attestation of the WILL.

From the evidence on record I do not find any material that the testator was misrepresented by any person and the WILL was obtained by fraud and undue influence. Accordingly these two issues are decided in favour of the petitioner.

Since valid execution and attestation of the last WILL of deceased testator Pushpara Rani Dey has been proved and the petitioner has been made an executor in the WILL, the petitioner is entitled to get a probate of last WILL of deceased Pushapa Rani Dey. Thus these two issues are also decided in favour of the petitioner.

In the result suit succeeds.

C.F paid is correct.

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Hence it is,

Ordered

that the suit be and the same is decreed on contest with costs.

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11.05.2022
Additional District & Sessions Judge
2nd Court, Barrackpore,
North 24 Parganas

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