

OS - No - 5 / 2010

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EDP-2413 dt 3.5.17
dt 15
I-18517 - O.S. 05/2010

WBF No. 3701

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT : South 24-Pargnas.

IN THE COURT OF : Additional District Judge, 13th Court, Alipore.

PRESENT : Sri Tarak Nath Bhagat, Additional District Judge, 13th Court, Alipore.

Tuesday, the 25th day of April, 2017

O.S. 05/2010

1. Sri. Sourya Gooptu

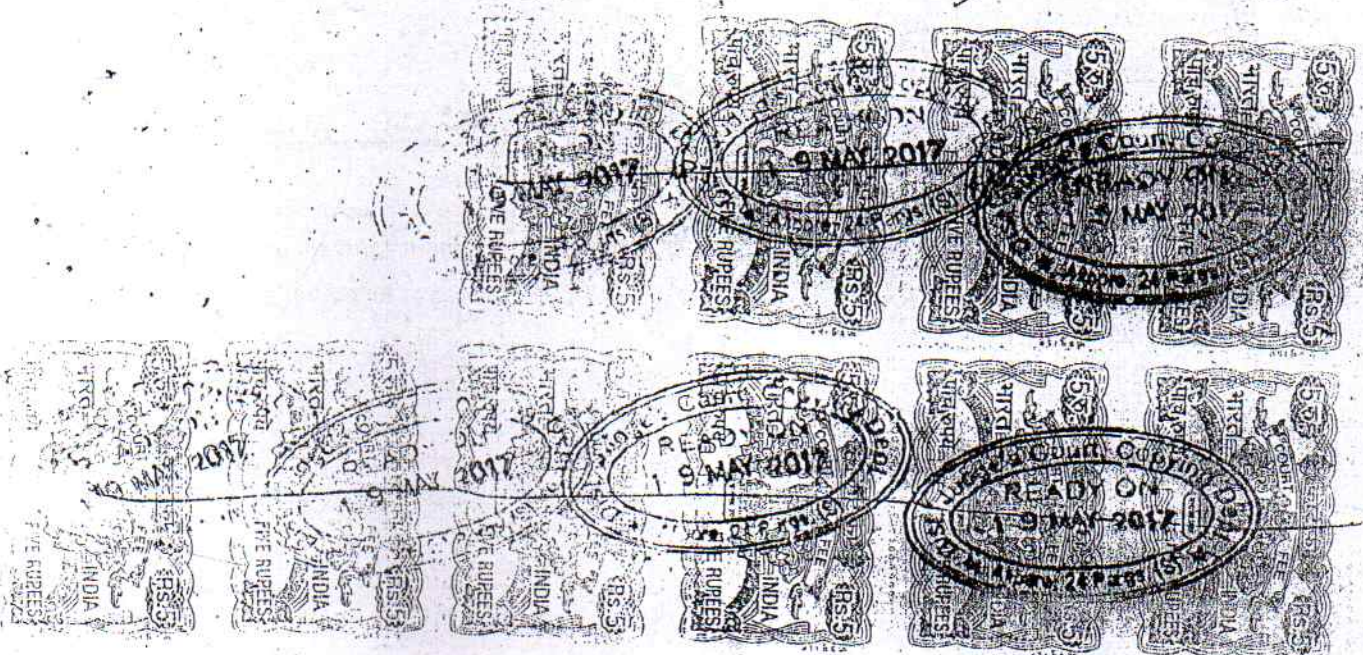
Plaintiff(s)
Petitioner(s)



[-VERSUS-]

1. Smt. Meenakshi Dutta
2. Sri. Sanjay Gooptu

368
Defendant(s)
Opposite Party(s)



143/17
EDP-24/3 dt. 3.5.17
ST-15
I-18517
O.S. 05/2010

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1. Sri. Sourya Gooptu

Plaintiff(s)
Petitioner(s)

[-VERSUS-]

1. Smt. Meenakshi Dutta
2. Sri. Sanjay Gooptu

Defendant(s)
Opposite Party(s)

Give date
of date.

This suit/case coming on for final hearing on
in the presence of

1. Biswanath Roy — Advocate(s)
Pleader(s) for

Plaintiff(s)
Petitioner(s)

1) Meenakshi Chatterjee — Advocate(s)
Pleader(s) for

Defendant(s)
Opposite Party(s)

and having stood for consideration to this day, the court delivered the
following judgment.

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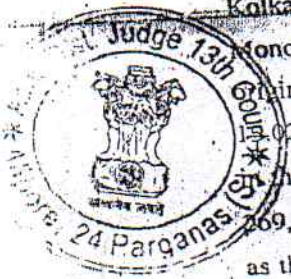
Original Suit No.05/2010 and Original Suit No.04/2010 of this court were heard side by side as the subject matter of both the cases were two different wills alleged to be executed by Samudra Gooptu and being his last will and testament. As such, to avoid conflict of decisions, these two cases being Original Suit No.05/2010 and Original Suit No.04/2010 of this court are being decided by this ^{common} ~~comment~~ judgment and which will govern both Original Suit No.05/2010 and Original Suit No.04/2010 of this court.

Meenakshi Dutta had filed the probate case being Act 39 Probate Case No. 189/2006 before the District Delegate at Alipore praying for probate of will of Samudra Gooptu. The same case became contentious as Sanjay Gooptu, filed objection and O.S - 160/2006 was instituted which was subsequently renumbered as OS-01/2007 of ADJ, FTC 5th Court Alipore and subsequently renumbered as O.S 4/10 of this court.

The facts of original suit No.04/2010 filed by Meenakshi Dutta in a nutshell being that Samudra Gooptu son of Late Sourendra Chandra Gooptu (also known as Surendra Chandra Goopta) resident of 26/2, Monoharpukur Road, PS Lake, Kolkata - 29 was her brother and he died on 28.03.2002 at his residence at 26/2 Monoharpukur Road, PS Lake, Kolkata - 29 which was the place where he originally resided prior to his death. During his lifetime he executed a will on 15.02.2002 in presence of witnesses and the said will was registered on 15.02.2002 at the Office of ADSR Alipore noted in book- III, Volume No.1 at pages - 266 to 269, being No.44 for the year 2002: By the said will the testator had appointed her as the executrix and bequeathed his properties as mentioned in the schedule to the will to her. The testator was a bachelor Hindu governed by the Dayabhaga School of Hindu Law and left behind as legal heirs his elder brother Sanjay Gooptu and his sister Meenakshi Dutta who is the plaintiff of O.S-04/2010. Sanjay Gooptu is residing at 26/2, Monoharpukur Road while the plaintiff Meenakshi Dutta is residing at G.D-14, Sector -III, Salt Lake City. The parents of the testator had predeceased him. The testator was in best of health and brain and had testamentary capacity at the time he executed the will dated 15.02.2002 after knowing the contents therein and it was his last will and testament. The plaintiff Meenakshi Dutta spent a sum of Rs.10,000/- on account of his last treatment, cremation and shiradh ceremony. She is willing to pay the duty legally payable for the grant of Probate. She has prayed for probate of this will of Late Samudra Gooptu.

The defendant of original suit No.04/2010 namely Sanjay Gooptu contested the case by filing written statement. It is apparent from the record that subsequently Sanjay Gooptu died and his name was substituted by the names of his legal heirs, defendant Nos.1(a), 1(b) and 1(c) and they did not file any separate W.S but accepted the W.S filed by Sanjay Gooptu.

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It appears from the W.S filed in original suit No.04/2010 that the defendant has challenged the alleged will as a forged and fraudulent document. His case being that Samudra Gooptu left a registered will dated 29.12.1999 and did not execute any other will subsequently. He has disputed that Samudra Gooptu executed any will on 15.02.2002 in the presence of witnesses and the same was duly registered in the office of ADSR Alipore. His case being that the purported will dated 15.02.2012 is a manufactured document, Samudra Gooptu was fickle minded and was not physically fit on 15.02.2002 suffering from various ailments. He was not in a fit state of mind and the same will be evident from the said manufactured will itself. His further case being that it is his apprehension that the signature of Samudra Gooptu was obtained on blank paper and the same might have been converted into a will by suppressing materials facts and practicing fraud upon Sub-Registrar, Alipore. He has admitted that leaving aside Meenakhi Dutta and Sanjay Gooptu there are no other heirs of deceased Samudra Gooptu.

His further case being that as Samudra Gooptu did not execute any will on 15.02.2002 no question of appointing the plaintiff as executrix arises.

His father had given the marriage of Meenakhi incurring huge expenses and given ornaments worth several Laacs of Rupees. In the will of his father Meenakhi Dutta was not given any property as they had incurred huge expenses towards her marriage. His father purchased the land in the name of his daughter where the plaintiff now resides and also given Unit Trust Certificate valued at Rs.1,00,000/-. The property as mentioned in alleged will initially belonged to Sourendra Chandra Gooptu the father of the parties. The plaintiff had raised objection when both her brothers had filed probate application for granting probate of the will of their father Late Sourendra Chandra Gooptu. The deceased Samudra Gooptu on receiving property from the estate of his father bequeathed the same in favour of his nephew and niece by will dated 29.12.1999. He has denied that shradh ceremony and religious rights of deceased Samudra Gooptu were performed by the plaintiff incurring expenses.

His further case being that the description of the scheduled property as made in the schedule of the application filed by Meenakhi Dutta is also wrong. The plaintiff had filed an affidavit before Hon'ble High Court at Calcutta wherein she had admitted that her brother Samudra Gooptu was very much addicted to alcohol and due to his such addiction he was suffering from various ailments and his brain was not functioning properly. Samudra ^{Gooptu} Gooptu, when he was physically fit, executed his last will which was duly registered on 29.12.1999 bequeathing his estate in favour of his nephew and niece who stayed with him in their Monoharpukur Residence. He was very much fond of his nephew and niece.

Upon pleadings of the parties this court framed the following issues for



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considering in O.S Case No.04/2010 which was previously numbered as O.S-01/2007 of ADJ, FTC-VI, Alipore.

ISSUES

1. Is the Suit maintainable in its present form?
2. Has the plaintiff any cause of action to file this case?
3. Has the testator duly executed the will and the will is genuine one?
4. Whether the will dated 15.02.2002 is the last will of the testator?
5. Whether the Testator had Testamentary capacity to execute the will?
6. Whether the will under challenge is a forged, manufactured and fraudulent documents?
7. Whether the Testator executed the Will out of his own free will, having a sound and disposing state of mind and understood the nature and effect thereof?
8. Is the Plaintiff entitled to relief as prayed for?
9. To what other relief/reliefs, if any, the petitioner is entitled to get?



In course of proceeding of this case Meenakhi Dutta deposed as P.W.1 Bithika Mondal deposed as P.W.2. The death certificate of Samudra Gupta issued K.M.C. No.0214206 dated 19.04.2006 was marked as Ext.1, the deed of cancellation of will marked as Ext.2, the signatures of Samudra Gooptu on this deed of cancellation of deed was marked Ext.2/1 to 2/4, the signatures of witnesses on this deed namely Bithika Mondal, Prosenjit Mukherjee and Debendra Nath Parui are marked Ext/ 2/5 to 2/7 respectively and the signature of Bithika Mondal with her address and father's name on the back side of the 1st page of this deed was marked Ext.2/8, the will was marked Ext.3, the signature of Samudra Gupta on the will was Ext. 3/1 to 3/5, the signature of witness Prosenjit Mukherjee was marked Ext.3/6, the signature of Bithika Mondal was marked Ext.3/7 and 3/9 and signature of Debendra Nath Parui was marked Ext.3/8. Signature of Meenakhi Dutta on the objection filed before the Hon'ble High court marked Ext.A and A/1, the summons along with copy of amended plaint in Title Suit No.1706/2010 marked as Ext.B and B/1.

Sourya Gooptu had filed the probate case being Act 39 Probate Case No.89/2007 before the District Delegate at Alipore praying for probate of will of Samudra Gooptu dated 29.12.1999. The said case became contentious as Meenakhi Dutta filed objection and O.S - 124/2007 was instituted which was subsequently renumbered as OS-01/2010 of ADJ FTC 6th Court and later renumbered as O.S. 05/10 of ADJ 15th Court Alipore and O.S. 05/10 of this court.

The contention of the plaintiff Sourya Gooptu in O.S. 05/10 being that Samudra Gooptu his uncle (younger brother of his father) died on 28.03.2006 at his

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residence at 26/2, Monoharpukur Road, Kolkata - 29. Prior to his death he duly executed his will on 29.12.1999 in presence of witnesses which was duly registered on 29.12.1999 at the office of ADSR Alipore. He had appointed the plaintiff Sourya Gooptu and his niece Pafamita Guha as executrix to act either jointly or separately. By his said will the testator Samudra Gooptu had bequeathed in favour of his nephew and his niece. The testator was bachelor Hindu governed by the Dayabhaga School and left behind his elder brother Sanjay Gooptu and sister Meenakhi Dutta as the legal heirs who could have inherited his estate in the event if he had died intestate. The parents of the testator had predeceased him. At the time of the execution of his will he was in sound mind and health and had executed the same knowing the contents thereof. The plaintiff who is the nephew of the testator spent a sum of Rs.50,000/- towards his last treatment and for cremation and shradh ceremony. The will was lying in the custody of the plaintiff but as he had misplaced the same so he could not file the case earlier. After tracing out the will on 26.03.2007 he filed the case.

The defendant of O.S. 05/10 Meenakhi Dutta contested the case by filing written statement. She has denied the material allegations as made in the probate application. She has denied that the will dated 20.12.1999 is the last will and testament of Samudra Gooptu the uncle of the plaintiff. She has admitted that Samudra Gooptu died on 28.03.2006 at 26/2, Monoharpukur Road, Kolkata where ordinarily resided. Her case being that Samudra Gooptu executed his last will and testament on 15.02.2002 in presence of the witnesses and the said will was duly registered before ADRS Alipore on 15.02.2002 and has been ^{recorded} in book No.III, volume No.1 at pages 166 to 169 being deed No.44/2002. In the said last will and testament dated 15.02.2002 Samudra Gooptu had appointed this defendant as executrix and bequeathed his properties to her. As such the will dated 29.12.1999 has already been revoked by the testator and he did so due to tremendous mental pain and torture caused by Sanjay Gooptu, the father of the plaintiff. Moreover, Sanjay Gooptu with undue influence and taking active part in preparation of the will dated 29.12.1999 got the said will in the name of the plaintiff and so the testator revoked it during his lifetime and executed the last will and testament dated 15.02.2002 in favour of the defendant. She has already filed a suit for grant of probate for the will dated 15.02.2002 of Samudra Gooptu and the same is to the knowledge of the plaintiff and his father. During the lifetime of the testator, the plaintiff Sourya Gooptu and his father had done activities to cause severe mental pain, agony and torture upon the testator and succeeded in obtaining the will under probate in this case.

Upon pleadings of the parties the court framed the following issues for considering in O.S Case No.05/2010

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ISSUES

1. Is the suit maintainable in its present form?
2. Whether testator Samudra Gooptu executed Will on 29.12.1999, if so, whether the testator had testamentary capacity to execute the said will?
3. Whether testator Samudra Gooptu revoked his will dated 29.12.1999 by registered Deed of cancellation?
4. Whether the Will dated 29.12.1999 is the best will of testator Samudra Gooptu?
5. Is the plaintiff entitled relief as prayed for ?
6. To what other relief, if any, the plaintiff is entitled to get?

In course of the proceeding of this case Jayanti Gooptu deposed as P.W.1 Sourya Gooptu deposed as P.W.2 and exhibited the will as Ext.1, the signatures of Samudra Gooptu on will as Ext. 1/1 to 1/6, the signature of the witnesses Jayanti Gooptu, Debasish Auddy and Arundhuti Mukherjee as Ext.1/7 to 1/9 respectively and signatures of Advocate Malay Sengupta as Ext.1/10 and 1/11.

A letter addressed to O/C Lake Police Station jointly written by Samudra Gooptu and Jayanti Gooptu was marked Ext. B, the advertisement in a news paper "The Telegraph" on 03.04.2006 on page - 2 marked Ext. C, the original D.L. of Samudra Goopta marked Ext. D and original death certificate of Samudra Gooptu of K.M.C. No.0125443 issued on 20.06.2011 date of registration 28.06.2011 marked Exbt. E.

It is apparent from the pleadings of O.S-04/2010 and O.S-05/2010 that in O.S-05/2010 Sourya Gooptu as plaintiff has prayed for probate of the will dated 29.12.1999 purportedly executed by Samudra Gooptu and claiming to be the last will and testament of Samudra Gooptu while Meenakhi Dutta as plaintiff by filing O.S - 04/2010 has prayed for probate of the will dated 15.02.2002 purportedly executed by Samudra Gooptu and claiming to be the last will and testament of Samudra Gooptu relating to the same properties.

For the sake of proper adjudication of both the cases and to avoid conflict of decisions the case was heard side by side from the time when the arguments were advanced by the parties and as such the case is being decided by a common judgment. In order to adjudicate the matter issues are being recast incorporating the issues framed earlier in both O.S-04/2010 and O.S - 05/2010.

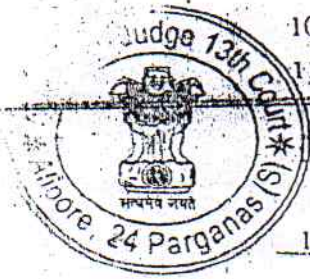
ISSUES

1. Are the two suits O.S-04/2010 and O.S - 05/2010 maintainable in present form?
2. Have the plaintiff of O.S-04/2010 and O.S - 05/2010 cause of action to file

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the respective suits?

3. Whether the testator Samudra Goptu executed the will dated 29.12.1999 and if so, whether the testator had testamentary capacity to execute the same?
4. Whether the will dated 29.12.1999 has been brought into existence by exercising undue influence?
5. Whether the will dated 29.12.1999 is a genuine will executed voluntarily by the testator and devoid of any suspicious circumstances?
6. Whether the testator Samudra Goptu executed will dated 15.02.2002 and if so, whether the testator had testamentary capacity to execute the same?
7. Whether the will dated 15.02.2002 is a post manufactured and fraudulent document?
8. Whether the will dated 15.02.2002 is a genuine will executed voluntarily by the testator and devoid of any suspicious circumstances?
9. Whether will dated 29.12.1999 was revoked by the testator Samudra Goptu by registered deed of cancellation subsequently?
10. Whether will dated 29.12.1999 is the last will of testator Samudra Goptu?
11. Whether the will dated 15.02.2002 is the last will of testator Samudra Goptu?
12. Whether the plaintiff of O.S- 04/2010 entitled to get probate of will dated 15.02.2002?
13. Whether the plaintiff of O.S - 05/2010 entitled to get probate of will dated 29.12.1999?



In course of the argument Ld. Lawyer for the applicant/plaintiff of O.S-04/2010 Meenakhi Dutta submitted the following citations in support of her case.

1. AIR 1959 SC 413
2. AIR 2003 SC 761
3. AIR 2007 SC 614
4. (2000)4 SCC 780
5. AIR 1994 Ker 85
6. AIR 1979 SC 145
7. ILR 2007 (3) Kerala 711, 2007 (3) KLJ 201
8. 1992 (2) Shim LC 261
9. AIR 1978 Delhi 86
10. AIR 1951 SC 103
11. AIR 2001 SC 1754
12. AIR 2003 SC 3109

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13. AIR 2006 SC 1975
14. AIR 1996 P and H 265
15. AIR 1964 SC 529
16. AIR 1955 SC 363

On the other hand, in course of his argument Ld. Lawyer for the applicant/plaintiff of O.S-05/2010 Sourya Gooptu submitted the following citations in support of his case.

1. 2011 (1) CHN (CAL) 194
2. 2011 (1) CHN (CAL) 204
3. AIR 2006 Supreme Court 1895
4. AIR 2006 Supreme Court 1899
5. AIR 2007 Supreme Court 614
6. AIR 2007 Supreme Court 622
7. AIR 1976 Bombay 315
8. AIR 1976 BOMBAY 329

Decision with reasons:

Issue Nos. 1 & 2:

Neither of the parties of both cases found any necessity to agitate these two issues at the time of advancing their respective argument before this court. However, on careful consideration of the relevant materials on record, the fact and circumstance of the cases this court is of the opinion that there is nothing to decide these two issues in the negative. As such, this court holds that the two suits O.S-04/2010 and O.S-05/2010 are maintainable in their present form and the plaintiff of these two cases had cause of action to file the respective suits.

Issues Nos. 3, 4 & 5:

These three issues are some what related to each other and are taken up together for brevity of discussion and convenience. It is apparent from the written statement filed by Meenakhi Dutta in O.S - 05/2010 that she has admitted to the existence of a will executed by Samudra Gooptu on 29.12.1999. Her case being that the said will dated 29.12.1999 executed by the testator has been revoked by a subsequent will dated 15.02.2002 in her favour. As such no probate can be granted on that will. Her further case being that the testator revoked the will dated 29.12.1999 as he was being tortured by Sanjay Gooptu and Sourya Gooptu. At one point in the written statement she has stated that Sanjay Gooptu with undue influence brought the said will dated 29.12.1999 into existence. It is apparent from such assertion that Meenakhi Dutta the defendant of O.S - 05/2010 has not denied the execution of this will dated 29.12.1999 by the testator Samudra Gooptu. Her only case is that due to undue influence of Sanjay Gooptu, the testator Samudra Gooptu executed the same. It appears from the evidence and the argument advanced

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that Meenakshi Dutta in order to prove undue influence only banks on the point that the testator used to reside in the family and company of Sanjay Gooptu and his children. It is further apparent that she had stated in the W.S of O.S-05/2010 that the said will dated 29.12.1999 was revoked on execution of a subsequent will. She has also produced the cancellation of will deed and got the same exhibited in the case filed by her being O.S-04/2010. This itself shows that the testator Samudra Gooptu had executed a will on 29.12.1999 in which he had made his niece and nephew the executors severally and jointly and also made them the beneficiaries. Meenakshi Datta has expressly and implicitly admitted the existence of a will dated 29.12.1999 duly executed by the testator Samudra Gooptu.

The provision of section 63 of Successions Act and Section 68 of the Evidence Act with regard to proving such document has been fulfilled and complied. The testator was in sound health and in sound mental capacity at the time of its execution as is apparent from the evidence.

It was observed in 2013 (4) WBLR Supreme Court p-700 "that a Will has to be executed in a manner required by section 63 of the Succession act. Section 68 of the Evidence Act requires the Will to be proved by examining at least one attesting witness. Section 71 of Evidence Act permits party to lead other evidence in certain circumstances but this does not absolve the party of his obligation under section 68 of the Evidence Act. In this case Section 68 of the Evidence Act is satisfied since one attesting witness was called for the purpose of proving the Will and he deposed to that effect. Section 63 of the succession Act lays down the requirement of a valid and enforceable Will that it shall be attested by two or more witnesses each of whom has seen the testator sign and affix his mark to the Will and each of the witnesses has signed the Will in the presence of the testator. Omission on the part of the P.W.2 to specifically state the signature of other witness was placed in presence of testatrix and her signature was also placed in presence of such attesting witness is not fatal. The deficiency can be taken care of by looking to the other evidence placed on record. It was also observed therein that cases in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. A shaky signature, a feeble mind, and unfair and unjust disposition of property, the propounder himself taking a lead part in the making of the Will under which he receives a substantial benefit and such other circumstances raised suspicion about the execution of the Will. The presence of suspicious circumstances makes the initial onus heavier and therefore in cases where the circumstances attended upon the execution of the Will excite the suspicion of the court the propounder must remove all legitimate suspicion before the document can be accepted as the last Will of the testator."

The plaintiff of O.S-05/2010 Sourya Gupta has given the evidence of the attesting witnesses namely P.W.1 Jayanti Gupta who had identified the will and

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proved the signature of the testator. She has further stated that the testator had signed on the will in presence of the witnesses namely herself, Debasish Auddy and Arundhuti Mukerjee and the witnesses also signed on the will in presence of the testator. Prior to signing the testator had read over the will to them and the will was registered and she was present on the spot. She has further stated that at the time of the execution of the will the testator was physically fit and mentally sound.

It is apparent from the evidence of P.W.2 Sourya Gooptu that he filed the case after taking consent of his sister Paromita Guha. He has also proved the custody of the will.

Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross examination it must follow that he believed that the testimony given would not be disputed at all. It is a rule of essential justice. In the case O.S. 5/2010 Meenakshi Dutta failed to put any question with regard to execution of the will dated 29.12.1999 by the testator out of undue influence.

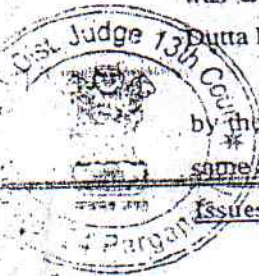
In AIR 1955 Supreme Court page 363 it has been observed that once it has been proved that a Will has been executed with due solemnities by a person of competent understanding and apparently a free agent, the burden of proving that it was executed under undue influence is on the person who alleges it. Meenakshi Dutta has failed to prove the same by cogent evidence.

As such this court holds that the will dated 29.12.1999 was duly executed by the testator Samudra Gooptu voluntarily having testamentary capacity to do the same and is devoid of any suspicious circumstances and undue influence.

Issues nos. 6 to 9.

These four issues are some what related to each other and are taken up together for brevity of discussion and convenience. Ld. Lawyer for Sourya Gooptu has submitted in course of his argument that the will dated 15.02.2002 is surrounded by suspicious circumstances. No age of the testator has been given therein. Moreover, the name of the father of the testator has been spelt wrongly therein. It is mentioned in this will that the testator had revoked his earlier will in the last part of 2000 but it appears that the will dated 29.12.1999 was executed in the last part of 1999 and not last part of 2000 which in itself is suspicious. Furthermore, one of the properties mentioned in this will relates to Bankura Gupta Nivas Baranagar Bon Hooghly which had already been sold long before the execution of this will which itself raises suspicious. Furthermore, the name of the husband of the Meenakhi Dutta has been given as Ashok Dutta of G.D-14, Sector-II, Salt Lake City in this will whereas the cause title of O.S-04/2010 gives the name of the husband of Meenakhi Dutta as Ashok Kumar Dutta of G.D-14, Sector -III, Salt Lake City. It is his further contention that in the death certificate No.0214205 filed in O.S - 04/2010 the name of the testator Samudra Gooptu has wrongly been

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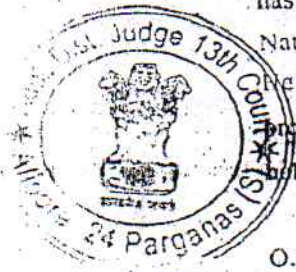
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written as Samudra Gupta and the name of his father has also been wrongly written as Surendra Chandra Gooptu. It is his further contention that one of the attesting witnesses who has come to prove the will is Bithika Mondal who happens to be an advocate. He has also identified the testator before the ADSR Alipore. The attesting

~~witness cannot act as identifier and as such the will has not been proved in accordance to the provision of Indian Succession Act. He has further argued that the endorsement given by the ADSR on the back side of the 1st page of this will reflects that this will was presented for registration on 16th Day of February, 2002 but strangely the will was registered on 15th Day of February, 2002. This all reflects the suspicious nature of the transaction and considering the suspicious circumstances surrounding the will and in view of the fact that it has not been proved in accordance with provision of Indian Succession Act this will cannot be probated. He has further submitted that the date of cancellation of will and the date of subsequent will are not the same which is a vital contradiction. Moreover, the serial number of the thumb impression in both these documents is 1291 which cannot be~~

possible as the serial number of the thumb impression of two different documents has to be different. He has further argued that the deed of cancellation of will is not required as the will is automatically revoked on execution of a subsequent will. He has further argued that the scribe of this will dated 15.02.2002 namely Debendra Nath Parui has not deposed to say under whose instruction he had drafted this will. He has further argued that Meenakhi Dutta had earlier also raised objection in the probate proceeding with regard to the will of their father which shows that she is illibent on getting the property by any means.

It appears from the deed of cancellation of will marked Ext.2 in O.S-04/2010 that the father's name of the testator Samudra Gooptu has been given as Late Sourendra Nath Gooptu. It appears from the will dated 15.02.2002 marked Ext.3 in O.S-04/2010 that the name of the father of the testator Samudra Gooptu has been given as Late Surendra Chandra Gooptu. It appears from the will dated 29.12.1999 marked Ext.1 in OS-05/2010 that the name of the father of the testator Samudra Gooptu has been given as Late Saurendra Chandra Gooptu. There is typographical error apparently with regard to the spelling of Sourendra Chandra Gooptu. In one place it has been given as Saurendra Chandra Gooptu in another place it has been given as Sourendra Chandra Gooptu and in another the alphabet 'a' or 'o' is missing in the name after the alphabet 'S' and it has been spelt as Surendra. Such typographical error in my opinion cannot be said to be suspicious circumstances surrounding the Will as ^{also} in the death certificate filed in the two different cases they appears to be an error in the spelling of the name of the testator and his father. The discrepancy as pointed out in the endorsement of the ADRS on the back side of the first page of will dated 15.02.2002 with ~~the~~ regard to the date of presentation of will for registration in my opinion can also be brushed aside as mere



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mistake on the part of the clerk concerned as at all other places in the document the date has been give as 15.02.2002. Moreover, the deed of cancellation of Will has been presented for registration as apparent from the document itself at 12/11 p.m. and the Will dated 15.02.2002 has been presented for registration as apparent from the document itself at 12/12 p.m. and both these two documents are having consecutive numbers being 1003 and 1004. Considering that both the documents were produced at the same time consecutive numbers were given and as both the documents have been executed by the same person, for convenience it appears thumb impression has been taken once in the index register and the same number 1291 appears on both these documents.

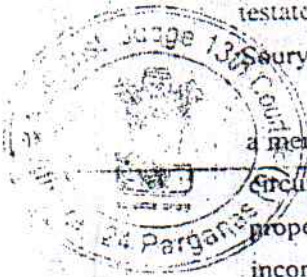
As per section 68 of the Evidence Act one attesting witness is required by law to prove a document. In both the cases only one attesting witness has been given by the parties who have filed the cases.

Ld. Lawyer for Sourya Gooptu has argued that an attesting witness cannot be an identifier. It appears that Bithika Mondal is an attesting witness and subsequently she has also identified the testator before the ADSR Alipore. She is not the bakalamder of the testator that is to say that she is not in the shoes of the testator. As such this court is of the opinion that the argument of the Ld. Lawyer for Sourya Gooptu does not hold ground.

Not giving age of the testator in the Will dated 15.02.2002, in my opinion, is a mere irregularity left blank due to oversight and cannot be termed as a suspicious circumstances. In the Will dated 29.12.1999 the testator stated that there were other property also belonging to him (testator) or in which he had a share and as such incorporation of a property named Gooptu Nivas in the Will dated 15.02.2002 allegedly sold earlier cannot be said to be a suspicious circumstances in this case.

The evidence of P.W.2 Sourya Gooptu given in O.S - 05/2010 reflects that he has not denied the signature of Samudra Gooptu in the cancellation of Will deed and the Will dated 15.02.2002. According to him, it is his surmise that the testator did not cancel the Will dated 29.12.1999 and did not execute any other Will. It is his view that the testator could not bequeath his property to Meenakhi Dutta after such aspersion, allegation, accusation and malicious statements made by her against the testator. It is nobody's case that the testator Samudra Gooptu was not physically fit or mentally alert at the time of the execution of the Will dated 29.12.1999 and/or 15.02.2002. Sourya Gooptu had alleged that Meenakhi Dutta had got the signatures of the testator on blank paper and subsequently post manufactured the Will dated 15.02.2002 and brought it into existence. The onus of proving the same was on him but he has failed to discharge such onus.

Moreover in his written statement Sanjay Gooptu has said that the testator was a fickle minded person which in itself suggests that Sanjay Gooptu had apprehension that his brother the testator Samudra Gooptu might have switched



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loyalties as the precise meaning of the word 'fickle' as per Oxford dictionary is 'changeable, especially as regards one's loyalties.'

Ld lawyer for Meenakshi Dutta has argued that as the will dated 15.02.2002 is registered it itself proves that it has been duly executed by the testator and is authentic. Mere registration of a will does not prove its authenticity. It has been observed in 2004 ICC Volume -1 Supreme Court p-695 that registration of a document will not dispense with the need of proving the execution and attestation of a document which is required by laws to be proved in the manner as provided in Section 68 of the Evidence Act. The endorsement made at the time of registration are relevant for the matters of registration only. Merely because the Will is registered one it would not dispense with the requirements of proof of due execution and attestation of Will for grant of letter of administration (2007 (3) ICC p-80).

It was observed in 2013 (4) WBLR Supreme Court p-700 "that a Will has to be executed in a manner required by section 63 of the Succession act. Section 68 of the Evidence Act requires the Will to be proved by examining at least one attesting witness. Section 71 of Evidence Act permits party to lead other evidence in certain circumstances but this does not absolve the party of his obligation under 68 of the Evidence Act. In this case Section 68 of the Evidence Act is satisfied since one attesting witness was called for the purpose of proving the Will and he has deposed to that effect. Section 63C of the succession Act lays down requirement of a valid and enforceable Will that it shall be attested by two or more witnesses each of whom has seen the testator sign and affix his mark to the Will and each of the witnesses has signed the Will in the presence of the testator. The requirements have been complied with as apparent from the evidence on record of O.S. 04/10.

The court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate court. (AIR 1954 SC

It has been observed by the Apex Court in AIR 1974 Supreme Court page 1999 that the propounder in order to succeed in his case has to show that the Will was signed by the testator and at that point of time, the testatrix was in sound state of mind able to understand the nature and effect of the disposition and thereafter he put his signature on the testament out of his own free Will in presence of 2 witnesses who attested it in his presence and in presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances the onus will be on the propounder to



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explain them to the satisfaction of the court before the will could be accepted as genuine. Where the defendant alleges undue influence, fraud and coercion the onus is on him to prove the same. If the caveator/defendant does not discharge the burden which rests upon him in establishing the circumstances which show that the Will had been obtained by fraud or undue influence, a probate of the Will must necessarily be granted if it is established that the testator had full testamentary capacity and had in fact executed it validly with a free will and mind.

In view of what has been observed above this court holds that Meenakshi Dutta has been able to prove that the testator Samudra Gooptu had voluntarily executed the Will dated 15.02.2002 in her favour and had testamentary capacity to do the same. The said Will dated 15.02.2002 is a genuine document devoid of any suspicious circumstances to exclude probate being granted. The Will dated 29.12.1999 earlier executed by the testator was subsequently revoked by the testator by the registered deed of cancellation, even though, it was not required as execution of subsequent will by itself revokes the earlier Will executed by the same person.

Issues Nos. 10 to 13:

While discussing the earlier issues this court has held that the testator Samudra Gooptu had executed his will dated 29.12.1999 which was held to be genuine and devoid of any suspicious circumstances. It has also been held by this court that the testator Samudra Gooptu subsequently revoked his earlier will dated 29.12.1999 by executing the deed of cancellation of the will on 15.02.2002 and on the same day he also executed another will which has also been held to be genuine and devoid of suspicious circumstances by this court. As such the will dated 15.02.2002 of the testator Samudra Gooptu is his last will and the plaintiff of O.S-04/2010 Meenakshi Dutta is entitled to get probate of this will. The plaintiff of O.S-05/2010 Sourya Gooptu is not entitled to get probate of will dated 29.12.1999 of the testator Samudra Gooptu as the same does not happen to be the last will and testament of testator Samudra Gooptu.

The issues are accordingly disposed of.

In the result, O.S. Case No. 04/2010 succeeds while O.S. Case No. 05/2010 fails.

Hence,

ORDERED

that both the cases being O.S. Case No. 04/2010 and O.S. Case No. 05/2010 are disposed off on contest but without cost by the common judgment.

The plaintiff of O.S. Case No. 04/2010 namely Meenakshi Dutta as executor of the Will dated 15.02.2002 of testator deceased Samudra Gooptu is

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entitled to get the probate of the Will after proper submission of the stamp duty and Court Fees, if not already paid. Issue probate in favour of the plaintiff of O.S. Case No. 04.2010 namely Meenakshi Dutta and a copy of the said Will dated 15.02.2002 be annexed along with the probate.

The plaintiff of O.S. Case No. 05.2010 namely Sourya Gooptu as one of the executors of the Will dated 29.12.1999 of testator deceased Samudra Gooptu is not entitled to get the probate of this Will dated 29.12.1999 as it is not the last will and testament of the deceased testator Samudra Gooptu.

Dictated & corrected by me.

L

A.D.J.

13th Court, Alipore.

Sub. Dist. Judge,

Alipore

Tarak Nath Bhagat

25.04.2012.

(Tarak Nath Bhagat)
Additional District Judge,

13th Court, Alipore.

Addl. Dist. Judge,

13th Court, Alipore

24 Pgs. (S).



HIGH COURT FROM No. (J) 25
DECREE IN ORIGINAL SUIT
(Order 20, Rules 6 and 7 Code of Civil Procedure)

District - 24 Parganas (S.)

In the 13th Court of Addl. Dist. Judge at Alipore

O. Suit No. 5 of 2010

Sri Soumya Gupta, s/o Sri Sanjay Gupta, of 26/2,
Manoharpur Road, P.S. - Lake, Kol-700029

Plaintiff (P)

Versus

1) Smt. Meemakshi Dutta, w/o Sri Ashoke K. Dutta,
of GD-14, Sector-111, Salt Lake City, Kol-700015

2) Sri Sanjay Gupta, 26/2, Manoharpur Road,
P.S. - Lake, Kol-700029

Defendants (D)

Suit
Claim for granting of probate valued at Rs-54,50,000/- only



This suit coming on this day for final disposal before 13th Addl. Dist Judge, Alipore, 24 Parganas
by Mr T.N. Bhagat --- in the presence of
and of Biswajit Roy --- Advr for the Plaintiff

Koushik Chakravarty --- Advr for the Defendants

It is ordered and decreed that the both the cases being o.s. case no-4/10 and o.s. case no-5/10 are disposed off on contest but without cost, by this common judgement.

The plaintiff of o.s. case no-4/10 namely Meemakshi Dutta as executor of the will dt. 15.2.02 of testator deceased Samudra Goptu is entitled to get the probate of the will after proper submission of the stamp duty and court fees, if not already paid. Issue probate in favour of the plaintiff of o.s. case no-4/10 namely Meemakshi Dutta and a copy of the ^{said} will dt. 15.2.02 be annexed along with the probate.

The plaintiff of o.s. case no-5/10 namely Souya Goptu as one of the executors of the will dt. 29.12.99 of testator deceased Samudra Goptu is not entitled to get the probate of this will dt. 29.12.99 as it is not the last will and testament of the deceased testator Samudra Goptu.



N. B. — This Judge shall make an autograph note stating the date, month and year on which the decree is signed and initial the corrections or alterations, if any.

13th Court, Allipore
Addl. Dist. Judge,
Judge (S) 2.5.17

D. N. Singh

certified that the name and address of the parties
have properly written as per print.

day April 2017

Judgment

date of the

*Enter here the

Given under my hand and the seal of this Court, this* 25th

percent per annum from this date to date of realisation.

in account of the costs of this suit, with interest thereon at the rate of

to the

be paid by the

and that the sum of Rs. - N.L.



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COSTS OF SUIT

Plaintiff	Rs.	P.	Defendant	Rs.	P.
1. Stamp for plaint	10	00	1. Stamp for power	10	00
2. Stamp for power	10	00	2. Stamp for petitions and affidavits	10	00
3. Stamp for petitions and affidavits	10	00	3. Cost of exhibits including copies made under the Bankers' Books' Evidence Act. 1891.	X	X
4. Cost of exhibits including copies made under the Bankers' Books' Evidence Act. 1891.	X	X	4. Pleaders' fee	54,50,000/-	10020
5. Pleaders' fee on Rs. 54,50,000/-	10,020	00	5. Subsistence and travelling allowance of witnesses (including those of party if allowed by Judge)	X	X
6. Subsistence and travelling allowance of witnesses (including those of party. If allowed by Judge)	X	X	6. Process fees	X	X
7. Process fees	X	X	7. Commissioner's fees	X	X
8. Commissioner's fees	X	X	8. Demi-paper	10	00
9. Demi-paper	X	X	9. Cost of transmission of records	X	X
10. Cost of transmission of records	X	X	10. Other costs allowed under the Code and Civil Rules and Orders.	X	X
11. Other costs allowed under the Code and Civil Rules and Orders.	X	X	11. Adjournment costs not paid in cash (to be added or deducted as the case may be)	X	X
12. Adjournment costs not paid in cash (to be added or deducted as the case may be)	X	X	Total	10050	00
Total	10065	00			

NOTE 1. The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve as they will be destroyed at the time prescribed by the High Court (Rule 557 et. Seq. Civil Rules and Orders, Vol. 1).

NOTE 2. The above note or the Schedule of costs shall be penned through if there are no exhibits for return or no costs in favour of any party (see Note 1 to rule 486, Civil Rules and Orders, Vol. 1).

