

Calcutta High Court

HON'BLE JUDGE(S): KRISHNA RAO, J

IN THE GOODS OF: SITA LAHIRI (DEC.) V. NIL

PLA - 9 of 2016, decided on 25/11/2022

Succession Act (39 of 1925) , S.276, S.63— Evidence Act (1 of 1872) , S.68, S.69— Application for grant of probate - Proof of Will - No attesting witnesses were examined but attending witness was examined and he categorically stated that he was present at residence of testatrix and in his presence, testatrix and attesting witnesses have put their signature in said last Will and Testament - In view of same, petitioner proved Will and there were no circumstances that appear to say anything suspicious in Will - Probate, granted in terms of Will and Testament of deceased subject to completion of all formalities.

(Para 13, 14, 15)

Name of Advocates

Rupak Ghosh Ms. Madhurima Das for Petitioner;

1. **ORDER** :-The petitioner has filed the instant application for grant of probate in respect of the last Will and Testament dated 21 May, 1980 of the deceased Sita Lahiri.
2. The deceased Sita Lahiri had executed a last Will and Testament by appointing her husband Ashis Ranjan Lahiri, since deceased as sole executor and in the event of her death, her daughter Smt. Monika Sarkar, the petitioner herein as the sole executrix of his last Will and Testament.
3. The mother of the petitioner expired on 28 June, 2014 leaving behind the following legal heirs :
 - i. Smt. Monika Sarkar Daughter (Petitioner herein)
 - ii. Smt. Shibani Ganguly Daughter
 - iii. Smt. Kanika Bhattacharjee Daughter
 - iv. Radha Rani Chatterjee Daughter.
4. The father of the petitioner was the pre-deceased to his wife who died on 27 March, 1982 leaving behind his wife and the above named four daughters as his legal heirs. After the death of the mother, the petitioner has filed the instant application for grant of probate of the last Will and testament dated 21 May,

1980.

5. While filing the instant application for grant of probate the petitioner has filed affidavit of assets and affidavit of the one of the attending witness namely Uttam Bhattacharyya.

6. None of the legal heirs of the deceased Sita Lahiri have filed any caveat and accordingly the petitioner has taken steps for issuance of general citations and special citations. By way of special citation, the petitioner has published the notice of the instant case in the English Daily News Paper namely Statesman and in the Bangla Daily News Paper namely Bartaman Patrika on 6 August, 2017 but in spite of publication of the notice no caveat is lodged.

7. The petitioner has examined two witnesses on commission to prove the last Will and Testament of the deceased Sita Lahiri namely:

- i. Uttam Bhattacharyya - The attending witness of the Will.
- ii. Smt. Monika Sarkar - The petitioner (Executrix).

8. Shri Uttam Bhattacharyya during his examination has identified the last Will and Testament dt. 21 May, 1980 and after identification, the Will is exhibited as Exhibit - 'A' and the signature of the Testatrix is exhibited as Exhibit - 'A/1' and signature of the attesting witnesses are exhibited as A/2, A/3 and A/4. The witness Uttam Bhattacharyya in his evidence stated that he was present at the residence of Sita Lahiri when she has executed the Will. He also stated that at the time of execution of the Will by Sita Lahiri, three attesting witnesses namely Shib Shankar Saha, Nemaï Kumar Kundu and Tarapada Saha were also present and in his presence, the said attesting witnesses have signed in the said will at attesting witnesses. He further stated that except the petitioner, other three daughters were also present at the residence of the deceased. The witness also stated that at the time of execution of Will Sita Lahiri was perfectly healthy state, both physically and mentally.

9. The petitioner during her evidence has proved the death of her father and mother and the death certificate of the mother is marked as Exhibit - 'B'. She has also identified the signatures of her mother in the said Will and also stated that

her mother was in fit state of mind.

10. In the instant case, none of the attesting witnesses were examined to prove the Will but the petitioner has examined the attending witness namely Uttam Bhattacharyya.

11. Section 63 of the Succession Act reads as follows :

"63 Execution of unprivileged Wills. -Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

12. Sections 68 and 69 of the Evidence Act reads as follows :

"68. Proof of execution of document required by law to be attested.-If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in

accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

69. Proof where no attesting witness found.-If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person."

13. In the instant case as none of the attesting witnesses were examined but the attending witness was examined and the said attending witness has categorically stated that he was present at the residence of the testatrix and in his presence the testatrix and the attesting witnesses have put their signature in the said last Will and Testament.

14. Considered the last Will and Testament of the deceased Sita Lahiri, evidence of the attending witness and the evidence of the petitioner, this Court finds that the petitioner has proved the Will and there is no circumstances appears to say any suspicious in the Will dated 21 May, 1980.

15. In view of the above, probate is granted to the petitioner in terms of the last Will and Testament of the deceased Sita Lahiri dated 21 May, 1980 subject to completion of all formalities.

Probate be issued accordingly by annexing the Will.

Petition Allowed