

IN THE COURT OF MS. SHIVALI SHARMA, DISTRICT JUDGE
-06: CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI

PC NO.42177/16 (first petition)

IN THE MATTER OF:-

Sh. Amarnath Ghosh Dastidar
S/o Late Sh. Amulya Chandra Ghosh
R/o G-1224, First Floor,
Chittaranjan Park, New Delhi-110019. PETITIONER

versus

1. The State
 Through Government Pleader
2. Smt. Rita Atorthy
 W/o Sh. S. K. Atorthy
 R/o LPT-346, Sarojini Nagar,
 New Delhi-110023.
3. Smt. Gita Guha Roy
 W/o Sh. J. Guha Roy
 R/o Block-III/86, Eros Garden,
 Charmwood Village,
 Distt. Faridabad, Haryana.
4. Smt. Sweta Ray
 W/o Sh. B. D. Ray
 R/o Block-III/53, Eros Garden,
 Charmwood Village,
 Distt. Faridabad, Haryana.

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PC No.42197/16
PC No.42195/16

Amarnath Ghosh vs. State
Bimalendu Ghosh vs State
Bimalendu Ghosh vs State

5. Smt. Tripti Saxena
W/o Sh. A. K. Saxena
R/o 85-B, Pocket-C,
Siddhartha Extension,
New Delhi-110014.
6. Smt. Dipti Dutta
W/o Late Arun Kumar Dutta
C/o Sh. Ram Dula Dutta, P & T Qtrs.
PWD Complex, Agartala-799001, Tripura.
7. Sh. Bimalendu Ghosh Dastidar
S/o Late Sh. Amulya Chandra Ghosh
R/p W-41, 3rd Floor (Rear Side),
Greater Kailash-II, New Delhi-110048.RESPONDENTS

Date of Institution	:	26.03.2003
Date of Reserving Judgment	:	16.02.2026
Date of Judgment	:	28.02.2026

PC No.42197/16 (second petition)

IN THE MATTER OF:-

Sh. Bimalendu Ghosh Dastidar
S/o Late Sh. Amulya Chandra Ghosh
Permanent resident of :
G-1224, Chittaranjan Park,
New Delhi-110019.

And also at :
W-41, 3rd Floor (Rear),
Greater Kailash-II, New Delhi-110048.PETITIONER

versus

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Amarnath Ghosh vs. State
Bimalendu Ghosh vs State
Bimalendu Ghosh vs State

1. State.
2. Smt. Gita Guha Roy
W/o Sh. J. Guha Roy
R/o Block-III/86, Eros Garden,
Charmwood Village,
Distt. Faridabad, Haryana.
3. Smt. Dipti Dutta
W/o Sh. A. K. Dutta
R/o G-1224, C. R. Park,
New Delhi- 1100019.
4. Smt. Tripti Saxena
W/o Sh. A. K. Saxena
R/o 85-B, Pocket-C,
Siddhartha Extension,
New Delhi-110014.
5. Smt. Sweta Ray
W/o Sh. B. D. Ray
R/o Block-III/53, Eros Garden,
Charmwood Village,
Distt. Faridabad, Haryana.
6. Sh. Amarnath Ghosh Dastidar
S/o Late Sh. Amulya Chandra Ghosh
B-138, Sarita Vihar, New Delhi.

And also at :
G-1224, First Floor,
Chittaranjan Park,
New Delhi-110019.

7. Smt. Rita Atorthy
W/o Sh. S. K. Atorthy
R/o LT-346, Sarojini Nagar,
New Delhi-110023.

.....RESPONDENTS

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PC No.42197/16
PC No.42195/16

Amarnath Ghosh vs. State
Bimalendu Ghosh vs State
Bimalendu Ghosh vs State

Date of Institution : 07.09.2005
Date of Reserving Judgment : 16.02.2026
Date of Judgment : 28.02.2026

PC No.42195/16 (third petition)

IN THE MATTER OF:-

Sh. Bimalendu Ghosh Dastidar
S/o Late Sh. Amulya Chandra Ghosh
Permanent resident of :
G-1224, Chittaranjan Park,
New Delhi-110019.

And also at :
W-41, 3rd Floor (Rear),
Greater Kailash-II, New Delhi-110048.PETITIONER

versus

1. State.
2. Smt. Gita Guha Roy
W/o Sh. J. Guha Roy
R/o Block-III/86, Eros Garden,
Charmwood Village,
Distt. Faridabad, Haryana.
3. Smt. Dipti Dutta
W/o Sh. A. K. Dutta
R/o G-1224, C. R. Park,
New Delhi- 1100019.
4. Smt. Tripti Saxena
W/o Sh. A. K. Saxena
R/o 85-B, Pocket-C,
Siddhartha Extension,

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PC No.42197/16
PC No.42195/16

Amarnath Ghosh vs. State
Bimalendu Ghosh vs State
Bimalendu Ghosh vs State

New Delhi-110014.

5. Smt. Sweta Ray
W/o Sh. B. D. Ray
R/o Block-III/53, Eros Garden,
Charmwood Village,
Distt. Faridabad, Haryana.
6. Sh. Amarnath Ghosh Dastidar
S/o Late Sh. Amulya Chandra Ghosh
B-138, Sarita Vihar, New Delhi.

And also at :
G-1224, First Floor,
Chittaranjan Park,
New Delhi-110019.

7. Smt. Rita Atorthy
W/o Sh. S. K. Atorthy
R/o LT-346, Sarojini Nagar,
New Delhi-110023.

.....RESPONDENTS

Date of Institution	:	05.09.2005
Date of Reserving Judgment	:	16.02.2026
Date of Judgment	:	28.02.2026

J U D G M E N T

1. Vide this judgment, I shall decide the above mentioned petitions under Section 276 of Indian Succession Act, 1925 for grant of Probate/ Letter of Administration.

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Amarnath Ghosh vs. State
Bimalendu Ghosh vs State
Bimalendu Ghosh vs State

FACTS OF THE CASE:

2. The present common judgment proposes to deal with three inter-linked probate petitions in respect of the estate of late Sh. Amulya Chandra Ghosh (Sh. A. C. Ghosh) son of late Sh. Bilash Chandra Ghosh. The petition filed by Sh. Amarnath Ghosh Dastidar has propounded a Will dated 10.05.1996 as the last and valid testament of late Sh. Amulya Chandra Ghosh while in one of the petitions filed by Sh. Bimalendu Ghosh, Will dated 07.08.1986 and codicil dated 31.12.1989 have been propounded as last and valid testament of Sh. Amulya Chandra Ghosh. In the second petition filed by Sh. Bimalendu Ghosh, Will dated 12.01.1998 executed by testatrix Smt. Usha Ghosh, mother of the parties and widow of late Sh. Amulya Chandra Ghosh has been propounded as her last and valid testament. By reason of the commonality in parties and subject matter, and the fact that the validity of one Will implicitly negates the other, these matters were heard together and are being decided by this common judgment.

3. The matters were also consolidated for the purpose of trial by Ld. Predecessor of this Court vide order dated 02.08.2006 and common evidence has been led with PC No. 42177/2016 titled as “*Amarnath Ghosh Dastidar v. State & Ors.*” as the lead matter in which entire evidence has been recorded.

Admitted Facts leading to filing of the present petitions:

4. Before proceeding further, it would be apposite to detail the admitted facts as culled out from all the petitions and stands taken by the parties to the lis.

5. Late Sh. A. C. Ghosh was allotted property bearing No. G-1224, Chitranjan Park, New Delhi-19 admeasuring 160 sq. yards in the year 1973 by DDA under the East Pakistani Displaced Persons (EPDP) Scheme (*hereinafter referred to as property in question*). This is an undisputed fact pleaded by all the parties to the petitions.

6. Late Sh. A. C. Ghosh expired on 16.12.1996 leaving behind 8 legal heirs including his widow, Smt. Usha Ghosh and his children Ms. Geeta Goha Roy, Sh. Bimalendu Ghosh Dastidar, Ms. Deepti Dua, Ms. Tripti Saxena, Ms. Shweta Ray, Sh. Amarnath Ghosh Dastidar and Ms. Rita Atorthy.

7. Mother of the parties/widow of Late Sh. A. C. Ghosh namely Smt. Usha Ghosh expired on 27.05.1998.

8. The first petition was filed by Sh. Amarnath Ghosh Dastidar in the year 2003 propounding a Will dated 10.05.1996 executed by the testator Sh. Amulya Chandra Ghosh bequeathing the property in question in his favour.

9. The other son of late Sh. A. C. Ghosh namely Sh. Bimalendu Ghosh filed two separate petitions in 2005 propounding the Will dated 07.08.1986 and Codicil dated 31.12.1989 executed by testator Sh. A. C. Ghosh in favour of Sh. Bimalendu Ghosh and mother of the parties Smt. Usha Ghosh and also recognizing certain rights of Sh. Amarnath Ghosh and second petition propounding a Will dated 12.01.1998 executed by testatrix Smt. Usha Devi in his favour. Accordingly, Sh. Amarnath Ghosh is the petitioner in PC 42177/16 wherein Sh. Bimalendu Ghosh has been impleaded as respondent no.7. On the other hand, Sh. Bimalendu Ghosh is petitioner in PC Nos. 42197/2016 and 42195/2016 wherein Sh. Amarnath Ghosh has been impleaded as respondent no.6. Respondents no.2 to 6 in the petition filed by Sh. Amarnath Ghosh and respondents no.2 to 5 and 7 in the petitions filed by Sh. Bimalendu Ghosh are the daughters of Late Sh. A. C. Ghosh. The representation in the Court is on behalf of Sh. Amarnath Ghosh by Sh. D.K Sharma and Sh. Thakur Sumit Ld. Counsels. Sh. Bimalendu Ghosh is represented by Ld. Counsel Sh. Manish Gandhi while sisters of the parties/daughters of Late Sh. A. C. Ghosh are represented by Ld. Counsel Sh Amit Saxena in all the petitions.

10. Respondents no.2 to 5 and respondent no.7 i.e. daughters of Late Sh. A. C. Ghosh have given their NOC in the petitions filed by Sh. Bimalendu Ghosh and have filed their objections in the probate case filed by Sh. Amarnath Ghosh Dastidar as respondents no.2 to 6.

11. In view of the details given above, there are three main parties in all the above petitions that are Amarnath Ghosh, Bimalendu Ghosh and daughters of Late Sh. A. C. Ghosh. They shall be referred to by these nomenclatures in further judgment for the sake of convenience and easy understanding.

Pleadings in PC NO. 42177/2017 titled as “*Amarnath Ghosh v. State and Ors.*”

Case of Amarnath Ghosh :

12. Sh. Amarnath Ghosh filed this petition alleging that the testator Sh. A. C. Ghosh executed his Will dated 10.05.1996 during his lifetime which was duly registered with the office of Sub Registrar-VIII, New Delhi vide registration No. 5156, Book No. 3, Vol NO. 119 pages No. 32 to 34 dated 03.08.2000 in respect of his immovable property bearing No. G-1224, Chitranjan Park, New Delhi. By virtue of the said Will, the testator had bequeathed all his rights in respect of the property in question in favour of Sh. Amarnath Ghosh as a sole legatee. Hence, the petition.

13. The petition is duly verified by Sh. Ravi Mohan Anand, one of the attesting witness to the Will and testament dated 10.05.1996.

Objections on behalf of all the respondents

14. Joint objections were filed by the daughters of Late Sh. A. C. Ghosh and Sh. Bimalendu Ghosh to the present petition wherein it was alleged that the petition has been filed with *malafide* intention on the basis

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of forged and fabricated documents with ulterior motive to usurp the property in question. It is alleged that at the time of allotment of the property in question and its construction, Sh. Amarnath Ghosh was a student and had not contributed anything in the construction of the property. Even after getting the job, he did not contribute anything to the family and Sh. Bimalendu Ghosh used to take care of all the expenses of the family including day to day expenses of his parents, marriage of his sisters as well as construction of the property. Sh. Bimalendu Ghosh was working at Oman at that time and being annoyed with the conduct of Sh. Amarnath Ghosh, his father used to write about his conduct to Bimalendu Ghosh. Late Sh. A. C. Ghosh had also written to Sh. Bimalendu Ghosh that Sh. Amarnath Ghosh was abusive towards them and had illegal designs to usurp the property. Similar complaints were also made in writing by Smt. Usha Ghosh, mother of the parties, through letters to Sh. Bimalendu Ghosh.

15. Respondents alleged that Sh A. C. Ghosh had executed a Will dated 07.08.1986 during his lifetime wherein he bequeathed his property bearing No. G-1224, in favour of his wife Smt. Usha Ghosh and his eldest son Sh. Bimalendu Ghosh. The said Will was followed by a Codicil dated 31.12.1989. As per Will 07.08.1986 and Codicil dated 31.12.1989, Sh. A. C. Ghosh bequeathed all his rights and title in the property in question to his wife and his son Sh. Bimalendu Ghosh and in order to avoid trouble from Amarnath Ghosh, he was permitted to raise first floor on the property in question without affecting the Ground Floor for his own use and

occupation and at his own cost with separate water and electricity connection and tax assessment. However, Sh. Amarnath Ghosh was neither allowed nor empowered to dispose of the first floor of the property in question without written consent from Sh. Bimalendu Ghosh.

16. Sh. A. C. Ghosh expired on 16.12.1996. After his demise, his last Will dated 07.08.1996 and codicil dated 31.12.1989 were opened on 06.12.1997 in the presence of all the legal heirs of the testator except one of the daughter namely Ms. Dipti Dutta who was not in town at that time. The said Will and Codicil were duly accepted by all the Legal representatives including Sh. Amarnath Ghosh. At that time, Sh. Amarnath Ghosh did not disclose about any other alleged Will dated 10.05.1996. Widow of Late Sh. A. C. Ghosh expired on 27.05.1998. During her lifetime, Smt. Usha Ghosh executed her Will dated 12.01.1998 duly registered as document bearing registration No. 112 in additional Book No. III, Volume No. 775 at pages No. 1 to 4 dated 12.01.1998 with the office of Sub-Registrar of Assurances V, New Delhi by virtue of which she bequeathed her 50 % share in the property in question in favour of her elder son Sh. Bimalendu Ghosh.

17. Sh. Amarnath Ghosh is well aware of the said Wills of his father as well as his mother, but with *malafide* intentions did not disclose about the same in the present petition. The Will propounded by Sh. Amarnath Ghosh dated 10.05.1996 is full of contradictions and clearly shows *malafide* intentions of Sh. Amarnath Ghosh to usurp the property in question. The

alleged Will dated 10.05.1996 is a forged and fabricated document and does not bear the signatures of Late Sh. A. C. Ghosh. During his lifetime, Late Sh A. C. Ghosh was physically, emotionally and financially harassed by Sh. Amarnath Ghosh and, accordingly, there was no question of bequeathing the property in question in his favour by Sh. A. C. Ghosh. With these contentions, the petition filed by Sh. Amarnath Ghosh and Will dated 10.05.1996 propounded by him have been controverted by other children of late Sh. A. C. Ghosh.

Rejoinder

18. Rejoinder to the objections was filed by Sh. Amarnath Ghosh wherein he denied the contents of the objections and stated that all the respondents were hands in glove and were trying to harass him. It is alleged that the construction of property in question was done by Late Sh. A. C. Ghosh from a loan taken from LIC and there was no contribution of Sh. Bimalendu Ghosh in the same. It is also stated that after completing his Engineering course in 1979, Sh. Amarnath Ghosh took up a job in Delhi and started living with his parents, looked after them and shouldered the responsibility of re-payment of the loan, household expenses and also renovated the ground floor of the house. Sh. Amarnath Ghosh also denied that Sh. Bimalendu had ever contributed anything towards his education. It is alleged that Sh. Bimalendu Ghosh who was living abroad, shirked his responsibility towards his old parents while Sh. Amarnath Ghosh always took care of his parents. It is also denied that Sh. Bimalendu Ghosh made any contribution towards the marriage expenses of his sisters. The

pleadings that parents of the parties have made written complaints to Sh. Bimalendu Ghosh regarding conduct of Sh. Amarnath Ghosh are categorically denied.

19. Sh. Amarnath Ghosh specifically stated in his rejoinder that the alleged Will of 1986 is of no relevance at all since it is not the last and final Will of Late Sh. A. C. Ghosh and was a tempered document. It is denied that the Will dated 07.08.1986 and Codicil dated 31.12.1989 were opened in the presence of all the LR's of Late Sh A. C. Ghosh on 06.12.1997 or that the same were accepted by all the children of Late Sh. A. C. Ghosh.

20. It is stated by Sh. Amarnath Ghosh that the Will propounded by him dated 10.05.1996 and the Deed of Dedication dated 1987 was known to all concerned. Respondents no. 3 and 4 were also witnesses to the said Deed of Dedication. Moreover, as desired by Sh. A. C. Ghosh, copies of Deed of Dedication and Will dated 10.05.1996 were sent to all the respondents under certificate of posting. Although, respondent no.7 could not be served due to his non-availability at his available address, but he was duly informed about the same by other respondents. Petitioner had also intimated L&DO, but till then respondent no.7 Sh. Bimalendu Ghosh never disclosed about the existence of the alleged Will dated 07.08.1986 for the reasons best known to him. It is also averred that Smt. Usha Ghosh had no right to execute any Will in respect of the property owned by Sh. A. C. Ghosh. It is stated that alleged Will dated 12.01.1998 executed by Smt.

Usha Ghosh has no legal sanctity and is not a valid document in the eyes of law. The Will dated 07.08.1986 of Late Sh. A. C. Ghosh alongwith Codicil dated 31.08.1989 and Will dated 12.01.1998 of Smt. Usha Ghosh are alleged to be forged and fabricated documents. Sh. Amarnath Ghosh has reiterated the authenticity of the Will dated 10.05.1996 and reiterated that the same is the last and valid testament of late Sh. A. C. Ghosh.

Pleadings in PC No. 42197/2017 ‘Bimalendu Ghosh v. State and Ors.’

Case of Bimalendu Ghosh

21. Sh. Bimalendu Ghosh filed the present petition under Section 278 of Indian Succession Act for grant of probate of the Will dated 07.08.1986 and Codicil dated 31.12.1989 executed by late Sh. Amulya Chandra Ghosh. It is alleged that by virtue of aforesaid Will and Codicil Late Sh. A. C. Ghosh had bequeathed all his rights in respect of the property in question equally in favour of his wife Smt. Usha Ghosh and his elder son Sh. Bimalendu Ghosh. Sh. A. C. Ghosh expired on 16.12.1996 and Smt. Usha Ghosh expired on 27.05.1998. During her lifetime, Smt. Usha Ghosh also executed a registered Will dated 12.01.1998 bequeathing her share in the property in question in favour of Sh. Bimalendu Ghosh. The Will dated 07.08.1986 and Codicil dated 31.12.1989 executed by Late Sh. A. C. Ghosh were opened in the presence of all the legal heirs except respondent no.3. However, no objections were raised by any person whatsoever. Respondent Sh. Amarnath Ghosh has propounded another Will dated 10.05.1996 which is a forged and fabricated document and has been fabricated with a view of usurp the property in question. A separate

petition under Indian Succession Act filed by Sh. Amarnath Ghosh qua the said Will is pending disposal. Sh. Bimalendu Ghosh has also filed a separate probate petition in respect of Will dated 12.01.1998 executed by the mother of the parties Smt. Usha Ghosh in his favour. Alongwith the petition, affidavit of Sh. B.P Ganguly one of the witness to Will dated 07.08.1986 and Codicil dated 31.12.1989 was filed supporting the petition.

Stand of daughters of Late Sh. A.C Ghosh and Smt. Usha Ghosh/Sisters of Bimalendu Ghosh and Amar Nath Ghosh:

22. Separate affidavits were filed by sisters of the parties all dated 12.04.2006 supporting the case of the petitioner Sh. Bimalendu Ghosh. It is stated in the affidavits that Will dated 07.08.1986 and Codicil dated 31.12.1989 executed by Late Sh. A. C. Ghosh were opened by Ms. M. Jayshree, Advocate on 06.12.1997 and read over in the presence of all the legal heirs of Late Sh. A. C. Ghosh except respondent no.3 Ms. Dipti and all of them accepted the same without raising any objections.

Objections filed by respondent Amar Nath Ghosh.

23. Respondent Sh. Amarnath Ghosh filed his objections to the petition wherein he preliminarily objected the petition on the ground that the alleged Will dated 07.08.1986 and Codicil dated 31.12.1989 were forged and fabricated documents prepared with the ulterior motive of defeating the last and final Will dated 10.05.1996 executed by the testator Late Sh. A. C. Ghosh in respect of which already a Probate Petition has been filed by Sh. Amarnath Ghosh. The present petition in respect of earlier alleged

Wills has been filed much later after filing of the Probate Petition by Sh. Amarnath Ghosh. The contents of alleged Will dated 07.08.1986 are ambiguous and cannot be acted upon. On merits, it is categorically denied that Late Sh. A. C. Ghosh had executed any alleged Will dated 07.08.1986 or Codicil dated 31.12.1989. It is alleged that the delay in filing the present petition creates a doubt on the genuineness of the Will and Codicil propounded by Sh. Bimalendu Ghosh. It is also stated that the Will dated 07.08.1986 and Codicil dated 31.12.1989 were never read in the presence of all the LR's of Late Sh. A. C. Ghosh. The Will dated 10.05.1996 is alleged to be the last and final Will of Late Sh. A. C. Ghosh. It is also alleged that Sh. Bimalendu Ghosh did not take care of his parents and all the responsibility was taken by Sh. Amarnath Ghosh and he had also constructed the first floor of the property in question and renovated the same while Sh. Bimalendu Ghosh was residing abroad.

24. It is alleged that Late Sh. A. C. Ghosh had written a letter to Secretary, EPDP Association in 1992 to substitute the name of Sh. Amarnath Ghosh in place of his name as a life member of the Association. Sh. Amarnath Ghosh tried to arrange a meeting of all the LR's of Late Sh. A. C. Ghosh after his demise but they failed to assemble at one place so, he sent a copy of Will dated 10.05.1996 to all of them under certificate of posting. However, after expiry of mother of the parties, one of the sisters Smt. Deepti Dutta left her matrimonial home and without intimation to Sh. Amarnath Ghosh occupied one room in the property in question and started creating nuisance in the family atmosphere. Thereafter, Sh.

Bimalendu Ghosh created a forged and fabricated Will dated 07.08.1986 and Codicil dated 31.12.1989 in order to challenge the genuineness of last and final Will dated 10.05.1996 left by Late Sh. A. C. Ghosh. Prior to filing of the present petition, there was no whisper about the alleged Will dated 07.08.1986 and Codicil dated 31.12.1989.

25. It is also alleged that the present petition has been filed as a counter blast to the petition filed by Sh. Amarnath Ghosh in respect of Will dated 10.05.1996.

Rejoinder to the objections filed by Amar Nath Ghosh:

26. Sh. Bimalendu Ghosh filed rejoinder to the objections filed by Sh. Amarnath Ghosh wherein he reiterated the contents of his petition and denied the allegations made in the objections. He categorically stated that Late Sh. A. C. Ghosh had given three sealed envelopes to his wife, his eldest son Sh. Bimalendu Ghosh and his daughter Ms. Rita which were opened by Ms. M Jayasree, Advocate on 06.12.1997 in the presence of all the legal heirs including Sh. Amarnath Ghosh except Smt. Dipti Dutta who was not in town at that time and no one had objected to the said Will. The contents of the Will were read over by Ms. M Jayasree and copies were also handed over to all the LR's. Since, the Will dated 07.08.1986 and Codicil dated 31.12.1989 were accepted by all the legal heirs as valid and no objections were raised, there was no occasion for filing any Probate Petition by Sh. Bimalendu Ghosh. Sh. Bimalendu Ghosh was shocked to receive summons in respect of Probate Petition filed by Sh. Amarnath

Ghosh wherein he had propounded a forged and fabricated Will dated 10.05.1996. It is only thereafter that petitioner was forced to file the present petition for grant of Probate in respect of the Will dated 07.08.1986 and Codicil dated 31.12.1989. It is also stated that the Probate Petition in respect of alleged Will dated 10.05.1996 propounded by Sh. Amarnath Ghosh has been filed in the year 2003 which shows falsity of his case and the fact that he had fabricated the Will at a later stage.

27. The allegations that Sh. Bimalendu Ghosh did not look after his parents are categorically denied. It is also denied that the construction and renovation of the property in question was done by Sh. Amarnath Ghosh. Rather, it is stated that Sh. Amarnath Ghosh had been threatening the parents of the parties as well as their sisters with dire consequences with the sole *malafide* motive to usurp the property in question. With these contentions, the objections filed Sh. Amarnath Ghosh have been controverted.

Pleadings in PC No. 42195/16 titled as “Bimalendu Ghosh v. State and Ors:”

Case of Bimalendu Ghosh

28. Sh. Bimalendu Ghosh filed the present petition under Section 278 of Indian Succession Act for grant of probate of the Will dated 12.01.1998 executed by Late Smt. Usha Ghosh. It is alleged that by virtue of Will dated 07.08.1986 and Codicil dated 31.12.1989, Late Sh. A. C. Ghosh had bequeathed all his rights in respect of the property in question equally in

favour of his wife Smt. Usha Ghosh and his elder son Sh. Bimalendu Ghosh. Sh. A. C. Ghosh expired on 16.12.1996 and Smt. Usha Ghosh expired on 27.05.1998. During her lifetime, Smt. Usha Ghosh also executed a registered Will dated 12.01.1998 bequeathing her share in the property in question in favour of Sh. Bimalendu Ghosh. After demise of Smt. Usha Ghosh, her last Will dated 12.01.1998 was opened in the presence of all her legal heirs. However, no objections were raised by any person whatsoever. Respondent Sh. Amarnath Ghosh has propounded another Will dated 10.05.1996 which is a forged and fabricated document and has been fabricated with a view of usurp the property in question. A separate petition under Indian Succession Act filed by Sh. Amarnath Ghosh qua the said Will is pending disposal. Sh. Bimalendu Ghosh has also filed a separate probate petition in respect of Will dated 07.08.1986 and Codicil dated 31.12.1989 executed by the father of the parties Sh. A. C. Ghosh in his favour. Alongwith the petition, affidavits of Sh. B. P. Ganguly and Sh. N. C. Chatterjee, witnesses to Will dated 12.01.1998 were filed supporting the petition.

Stand of daughters of late Sh. A.C Ghosh and Smt. Usha Ghosh/sisters of Bimalendu Ghosh and Amar Nath Ghosh:

29. Separate affidavits were filed by sisters of the parties all dated 12.04.2006 supporting the case of the petitioner Sh. Bimalendu Ghosh. It is stated in the affidavits that Will dated 12.01.1998 executed by their mother Smt. Usha Ghosh was opened by Ms. M. Jayasree, advocate on 23.11.1999 and read over in the presence of all the legal heirs of Late Sh.

A. C. Ghosh and all of them accepted the same without raising any objections.

Objections filed by respondent Amar Nath Ghosh.

30. Respondent Sh. Amarnath Ghosh filed his objections to the petition, preliminarily objecting to the petition on the ground that the alleged Will dated 12.01.1998 was a forged and fabricated document and prepared with the ulterior motive of defeating the last and final Will dated 10.05.1996 executed by the testator late Sh. A. C. Ghosh in respect of which already a probate petition has been filed by Sh. Amarnath Ghosh. It is also alleged that the property in question was the self acquired property of late Sh. A. C. Ghosh and, accordingly, Smt. Usha Ghosh had no right, title or interest in her name entitling her to execute a Will in respect of the property in question. The present petition in respect of earlier alleged Wills has been filed much later after filing of the Probate Petition by Sh. Amarnath Ghosh. On merits, it is categorically denied that Late Sh. A. C. Ghosh had executed any alleged Will dated 07.08.1986 or Codicil dated 31.12.1989 or Late Smt. Usha Ghosh had executed a Will dated 12.01.1998. It is alleged that the delay in filing the present petition creates a doubt on the genuineness of the Will and Codicil propounded by Sh. Bimalendu Ghosh. It is also stated that the Will dated 12.01.1998 was never read in the presence of all the LR's of Late Smt. Usha Ghosh. Will dated 10.05.1996 is alleged to be last and final Will of late Sh. A. C. Ghosh. It is also alleged that Sh. Bimalendu Ghosh did not take care of his parents and all the responsibilities were undertaken by Sh. Amarnath Ghosh and he had also

constructed the first floor of the property in question and renovated the same while Sh. Bimalendu Ghosh was residing abroad.

31. It is alleged that Late Sh. A. C. Ghosh had written a letter to the Secretary, EPDP Association in 1992 to substitute the name of Sh. Amarnath Ghosh in his place as a life member of the Association. Sh. Amarnath Ghosh tried to arrange a meeting of all the LR's of Late Sh. A. C. Ghosh after his demise but they failed to assemble at one place. Therefore, he sent a copy of Will dated 10.05.1996 to all of them under certificate of posting. The contents of Will dated 12.01.1998 are ambiguous and cannot be relied upon. Moreover the same has no legal sanctity and late Smt. Usha Ghosh did not have any right title or interest to execute any Will in respect of the property in question.

32. It is also alleged that the present petition has been filed as a counter blast to the petition filed by Sh. Amarnath Ghosh in respect of Will dated 10.05.1996 of testator Sh. A. C. Ghosh.

Rejoinder to the objections filed by Amar Nath Ghosh.

33. Sh. Bimalendu Ghosh filed rejoinder to the objections filed by Sh. Amarnath Ghosh wherein he reiterated the contents of his petition and denied the allegations made in the objections. The objections were controverted in consonance with the rejoinder filed in PC No. 42197/2016 by Sh. Bimalendu Ghosh. The contents thereof are not reiterated herein for the sake of brevity.

Consolidation orders

34. PC No. 42177/16 was filed by Sh. Amarnath Ghosh on 28.03.2003. PC No. 42197/2016 and PC No. 42195/2016 were filed by Sh. Bimalendu Ghosh on 07.09.2005 and 05.09.2005 respectively. The petitions filed by Sh. Bimalendu Ghosh were marked to some other Court. Vide order dated 12.05.2006, both the said petitions were transferred to this Court. Vide order dated 02.08.2006, all the three matter were consolidated for the purposes of trial and the petition filed by Sh. Amarnath Ghosh was directed to be treated as the main petition for recording of evidence.

ISSUES:

35. In the petition filed by Sh. Amarnath Ghosh, the issues were framed vide order dated 16.11.2005. In both the petitions filed by Sh. Bimalendu Ghosh the issues were framed vide order dated 02.08.2006 and were amended vide order dated 12.12.2025. All the issues and amended issues are reproduced herein under:

ISSUES in PC NO. 42177/2016 titled as AMARNATH GHOSH DASTIDAR Vs. STATE & ORS.

ISSUE No.1: Whether Late Sh. Amulya Chandra Ghosh executed a valid and enforceable Will dated 10.05.1996 as claimed by the petitioner? OPP

ISSUE No.2: Whether the petitioner is entitled for grant of probate in respect of aforesaid Will? OPP

ISSUE No.3: Whether the petition is liable to be dismissed for the objections raised by the respondents? OPR

PC NO.42177/16
PC No.42197/16
PC No.42195/16

Amarnath Ghosh vs. State
Bimalendu Ghosh vs State
Bimalendu Ghosh vs State

ISSUE No. 4: Relief.

ISSUES in PC NO. 42197/2016 titled as BIMALENDU GHOSH DASTIDAR Vs. STATE ORS.

ISSUE NO.1: Whether the Will dated 07.08.1986 and codicil dated 31.12.1989 were validly executed by testator Sh. Amulya Chandra Ghosh in sound disposing mind and the same is his last Will and codicil and testament? OPP

ISSUE NO.2 : Relief.

ISSUES in PC NO. 42195/2016 titled as BIMALENDU GHOSH DASTIDAR Vs. STATE ORS.

ISSUE No.1. Whether the Will dated 12.01.1998 was validly executed by testatrix Smt. Usha Ghosh in sound disposing mind and the same is her last Will and testament? OPP

ISSUE NO.2 : Relief.

EVIDENCE :

Evidence led by Amar Nath Ghosh Dastidar

36. Sh. Amar Nath Ghosh examined 7 witnesses in all in support of his case.

37. PW-1 is the petitioner **Amar Nath Ghosh** who stated and reiterated on oath the contents of his petition in his evidence affidavit **Ex. PW-1/A**. He relied upon the following documents:

PC NO.42177/16
PC No.42197/16
PC No.42195/16

*Amarnath Ghosh vs. State
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Bimalendu Ghosh vs State*

- 1) Lease deed qua property in question **Ex. PW-1/X.**
- 2) Original Will dated 10.05.1996 **Ex. PW-1/A.**
- 3) Death certificate of Late Sh. A. C. Ghosh **Ex. PW-1/B.**
- 4) Sanction letter dated 14.08.1989 for construction of first floor of the property in question received from DDA **Mark A.**
- 5) Letter dated 24.02.1992 written by Late Sh. A. C. Ghosh to the Secretary EPDP Association for transfer of his life membership to Sh. Amarnath Ghosh **Ex. PW-1/C.**
- 6) Copy of Ration Card **Ex. PW-1/D.**
- 7) Copy of NOC given by Late Sh. A. C. Ghosh to Desu on 19.01.1990 **Mark B.**
- 8) Consent letter given by Late Sh. A. C. Ghosh for transfer of telephone No. 6437491 **Mark C.**
- 9) Consent letter/affidavit dated 10.03.1987 given by sisters of Sh. Amarnath Ghosh **Mark D.**
- 10) Receipt No. 809051 dated 17.10.1986 regarding payment of House Tax **Ex. PW-1/E.**
- 11) Deed of dedication dated 07.08.1987 **Ex. PW-1/F.**
- 12) Application dated 20.09.2001 for mutation made by Sh. Amarnath Ghosh in the office of L&DC **Ex. PW-1/G.**
- 13) Postal receipts in respect of sending of copy of Will to all his siblings by Sh. Amarnath Ghosh **Ex. PW-1/H.**
- 14) Copy of Attorney and letter written by Sh. Bimalendu Ghosh to Sh. Amarnath Ghosh **Ex. PW-1/J and Ex. PW-1/K.**

38. **PW-2 Sh. Prashant K. Chakraborty** is one of the attesting witness to the Will dated 10.05.1996 (**Ex.PW-1/A**). He deposed by way of his evidence affidavit **Ex.PW-2/A** that he was the family doctor of Sh. A.C Ghosh and was called by him in the morning hours of 10.05.1996 and was invited for tea in the evening. At around 05:00 PM when he reached the house of Sh. A. C. Ghosh, testator expressed his desire to bequeath the suit property in favour of his younger son. The other witness namely Sh. Ravi Mohan Anand was also present there. They became the witness to the Will dated 10.05.1996 on request of Late Sh. A. C. Ghosh who had also signed the Will in their presence. He also deposed that at the time of execution of the Will, Late Sh. A. C. Ghosh was physically fit and in a sound state of mind. Sometimes in the year 2000, on request of Sh. Amarnath Ghosh, he alongwith other witness Sh. Ravi Mohan Anand accompanied Sh. Amarnath Ghosh to the office of Sub-Registrar and on their authentication the Will dated 10.05.1996 was registered. He identified the signatures of the testator at point A, his signatures at Point B and signatures of Sh. Ravi Mohan at Point C on the original Will (**Ex.PW-1/A**). He also identified his signatures and those of Sh. Ravi Mohan on the back side of the Will followed by their thumb impressions.

39. **PW-3 Sh. Ravi Mohan Anand** is the second attesting witness to the Will dated 10.05.1996 (**Ex.PW-1/A**). He deposed by way of evidence affidavit i.e. **Ex.PW-3/A** that he was a college friend of younger son of Sh. A. C. Ghosh and also knew elder son of Sh. A. C. Ghosh as he was in Muscat with him. Sh. A. C. Ghosh had called him to his house on

10.05.1996 at around 05:00 PM. He deposed about the execution of the Will dated 10.05.1996 and its registration in consonance with the testimony of PW-2. He also identified the signatures of the testator, his own signatures himself as well as the signatures of the other witness on the original Will (**Ex.PW-1/A**).

40. **PW-4 Sh. P.K Ghosh** is a family friend and relative of Late Sh. A. C. Ghosh. He deposed by way of his evidence affidavit **Ex.PW-4/A** that he was residing in the same colony as Late Sh. A. C. Ghosh and used to meet him quite often during his lifetime. Sh. A. C. Ghosh had told him that he had taken steps for executing the Will in favour of his younger son since he was looking after him during his old age. Late Sh. A. C. Ghosh had also expressed his displeasure against his elder son as he did not give him proper attention and was living abroad.

41. **PW-5 Sh. Amit Aggarwal** is a summoned witness from the office of Sub-Registrar-VIII. He produced the original registration register pertaining to the Will (**Ex.PW-1/A**) and compared the same with the registered copy and found it to be exact copy.

42. **PW-6 Sh.B.N Srivastava** is a handwriting expert who deposed by way of evidence affidavit **Ex.PW-6/A** that he was working as handwriting and fingerprint expert for over 35 years and had received training in the science from an expert from Delhi Late Sh. N. K. Mehta. He had also passed one year certificate course in Forensic Science from University of

Delhi and had given opinion and evidence in around 3500 cases in different Courts of law in States of U.P, Haryana, Punjab, Rajasthan and Delhi. In the present case, he had examined the questioned signatures of Sh. A. C. Ghosh on Will dated 10.05.1996 and compared the same with admitted signatures of Sh. A. C. Ghosh on two parts of Will dated 07.08.1986 and 31.12.1989 and comparative signatures as witness on indemnity bond, affidavit and undertaking dated 15.03.1984 and DDA vide challans. The questioned signatures Q1 to Q3 have been found to be genuine having been written by the writer of the admitted (C1 to C5) and comparative signatures (B1 to B9). The examination was done through photographic enlargements. He proved the reasons for his opinion given in his report **Ex.PW-6/1**. The enlarged photographs of the compared signatures are **Ex.PW-6/2 to Ex.PW-6/18** and negatives are **Ex.PW-6/19** colly. He also deposed that the markings done on the photographs were in his handwriting and he himself prepared the photographs and the negatives.

43. **PW-7 is Sh. Jawahar Lal Goyal**, Notary Public who had notarized the Deed of Dedication **Ex.PW-1/F**. He deposed that he was appointed as a Notary Public by Delhi Administration in the year 1992. He was shown the certified copy of Deed of Dedication **Ex. PW-7/1**. He identified his signatures and stamp on the same and stated that as per the noting on the document, the same appears to have been notarized by him on 21.12.1993. He also stated that the person whose photograph is affixed on the document had come to him for notarization of the same and he had attested

the photograph and notarized the document. He could not recollect if any other person had accompanied him at the time of notarization. He also stated that he knew the said person as he used to walk with him in the park when he was residing in DDA flats, CR Park during 1992 to 1995.

44. All the witnesses examined by Sh. Amarnath Ghosh were duly cross-examined by Ld. Counsels for Sh. Bimalendu Ghosh and sisters of the parties.

Evidence led by Bimalendu Ghosh

45. Sh. Bimalendu Ghosh examined 10 witnesses in all in support of his case.

46. **RW-1 is Sh. N.C Chatterjee** being an attesting witness to the Will dated 12.01.1998 executed by testatrix Smt. Usha Ghosh. He deposed by way of his evidence affidavit **Ex.RW-1/A** that on request of Smt. Usha Ghosh he had accompanied her alongwith Sh. B.P Ganguly to the office of Sub-Registrar at Vikas Sadan, INA for registration of her Will. He was present alongwith Sh. B.P Ganguly and had seen the testator Smt. Usha Ghosh affix her signatures on the Will **Ex.RW-1/1**. He had also signed the Will in the presence of the testator and at the same time, the other witness Sh. B.P Ganguly also signed the Will. He had also signed an affidavit alongwith petition for grant of probate of the Will dated 12.01.1998. At the time of tendering of his evidence affidavit, RW-1 identified his signatures at point X on Will **Ex.RW-1/1** but he could not identify the signatures of Smt. Usha Ghosh although he stated that she had signed before him.

47. **RW-2 is Sh. Bimalendu Ghosh** who deposed by way of his evidence affidavit **Ex.RW-2/A** the contents of both his petitions as well as objections filed in the petition of Sh. Amarnath Ghosh. He relied upon the following documents:

- 1) *Letter dated 25.05.1981 is Ex.RW-2/1A.*
- 2) *Letter dated 16.06.1981 is Ex.RW-2/1B.*
- 3) *Letter dated 29.06.1981 is Ex.RW-2/1C.*
- 4) *Letter dated 22.03.1982 is Ex.RW-2/1D.*
- 5) *Letter dated 01.06.1982 is Ex.RW-2/1E.*
- 6) *Letter dated 14.06.1982 is Ex.RW-2/1F.*
- 7) *Letter dated 16.06.1987 is Ex.RW-2/1G.*
- 8) *Letter dated 07.06.1989 is Ex.RW-2/1H.*
- 9) *Letter dated 15.09.1989 is Ex.RW-2/1I.*
- 10) *Letter dated 20.10.1989 is Ex.RW-2/1J.*
- 11) *Letter dated 20.02.1991 is Ex.RW-2/1K.*
- 12) *Letter dated 12.05.1991 is Ex.RW-2/1L.*
- 13) *Will dated 07.08.1986 of Sh. A. C Ghosh is Ex. RW-2/2.*
- 14) *Codicil Dated 31.12.1989 is Ex. RW-2/3.*
- 15) *Certificate issued by Ms. Jayasree is Ex. RW-2/4.*
- 16) *Another certificate issued by Ms. M. Jayasree dated 23.11.1999 is Ex. RW-2/5.*

48. **RW-3 Sh. Nikhilesh Pratap Singh** is a summoned witness from the

court of Ld. CMM, South East who produced the summoned record being the case file of FIR No. 171/06 PS C.R Park (Crime Branch), Delhi.

49. **RW-4 Captain R.N Abhilashi** is a handwriting expert who deposed by way of evidence affidavit **Ex.RW-4/A** that he is an Ex-Defence Officer and a science graduate with post graduation in philosophy. After superannuation, he carried out extensive study of the science of handwriting and fingerprint examination and comparison and allied matters and also took practical training in that field from a renounced handwriting and fingerprint expert. He has been practicing in Delhi since about 15 years and had examined a number of cases as an expert. In the present case, he had examined the disputed signatures reading “A. C. Ghosh” affixed to the Will dated 10.05.1996 and have compared the same with the comparative signatures available in the Court record. On comparison, he found that the disputed signatures were not in the hand of the writer of the comparative/admitted signatures. He relied upon his detailed report dated 28.08.2010 giving reasons for his opinion which is **Ex.RW-4/1**. This witness was partly cross-examined on 14.08.2014 and further cross-examination was deferred but he could not be further cross-examined as he could not appear due to his old age. Thus, his incomplete testimony cannot be read in evidence.

50. **RW-5 Kanwarjeet Singh** is a summoned witness from the office of Sub-Registrar-V Mehrauli. He produced the record pertaining to registration of Will dated 12.01.1998 and deposed that on comparison, the original Will **Ex.RW-1/1** was found to be correct.

51. **RW-6 Ms. M Jayasree** is again a summoned witness. She deposed that she had opened the original Will dated 07.08.1986 (**Ex. RW-2/2**) and Will-2 dated 31.12.1989 (**Ex.RW-2/3**) executed by Late Sh. A.C Ghosh. The certificate dated 06.12.1997 is in her handwriting and bears her signatures. The same is **Ex.RW-2/4**. She had opened the closed envelope containing the said two documents alongwith two other envelopes left by Late Sh. A. C. Ghosh. She stated that **Ex. RW-1/1** was prepared by her as per instruction of Smt. Usha Ghosh and she had issued certificate dated 31.11.1999 which is **Ex.RW-2/5**.

52. **RW-7 Sh. J. Bhattacharjee** is a witness to Will dated 07.08.1986 (**Ex. RW2/2**) and Codicil dated 31.12.1998 (**Ex.RW2/3**). He is a summoned witness and deposed that Will (**Ex. RW2/2**) was executed in his presence and was signed by Sh. Amulya Chandra Ghosh. At that time, another witness Sh. B. P. Ganguly was also present who had also signed Will (**Ex. RW-2/2**) alongwith the testator and himself. He also deposed that Codicil dated 31.12.1989 (**Ex. RW-2/3**) was executed and signed by Sh. A. C. Ghosh in his presence. At that time, the witness Sh. B. P. Ganguly had also signed the Codicil alongwith him and the testator. He identified his signatures on Will (**Ex. RW2/2**) and Codicil (**Ex. RW2/3**).

53. **RW-8 Sh. Deepak Kumar** is an executive from FRRO. He is a summoned witness but could not produce the summoned record pertaining to travel records of Ms. Sweta Ray having passport no N586986 on

07.08.1987. He deposed that the record prior to 1988 was not available with them. Report to this effect dated 24.09.2025 was proved as (Ex.RW8/1). The official communication in this regard received from Central Foreigners Branch is (Ex.RW8/2).

54. This witness was again examined as **DW-8A** wherein he produced the letter dated 17.11.2025 issued by assistant FRRO HW Delhi which is (Ex.DW8A/1) and authority letter in his favour as (Ex.DW8A/2).

55. **RW-9** is again a summoned witness **Sh. Vijay Kr. Shrivastava** Ahlmad from the Court of **Ld. CJM, South-East, Saket Courts**. He produced the summoned record i.e. case file pertaining to FIR no. 171/06 PS C.R. Park (Crime Branch). He proved the opinion/report of forensic expert from GEQD alongwith documents compared after comparing the same from the original file as **Ex.DW9/1**.

56. In his cross-examination the entire testimonies of PW5 Shweta Ray, PW6 Rita Atorthy, PW7 Tripti Saxena, PW10 S. Ahmed Deputy Director, CFSL recorded in criminal case were taken on record and marked as **Ex.DW9/R2A to Ex.DW9/R2D**.

57. **RW10 is Sh. S. Ahmed**, Deputy Director, CFSL, Delhi. He deposed that he was posted as Assistant Government Examiner of Questioned document at GEQD Shimla. At the relevant time, certain documents were received at his office and were given to him for forensic examination. He

examined all the signatures which were there in the questioned and admitted documents with scientific instruments and came to a conclusion that the person who had signed admitted documents A1, A2 & C1 to C20 had not signed the questioned document i.e. Will dated 10.05.1996 marked as Q1-Q3. He proved the report and reasons given by him for his opinion which is **Ex.DW9/1**.

58. All the witnesses examined by Sh. Bimalendu Ghosh were cross-examined at length on behalf of the Sh. Amarnath Ghosh as well as sisters of the parties.

Evidence led by daughters of late Sh. A.C. Ghosh

59. Sisters of the petitioners Sh. Amarnath Ghosh and Sh. Bimalendu Ghosh did not lead any evidence in either of the petitions. While in the petitions filed by Sh. Bimalendu Ghosh they had already filed NOC in favour of the petitioner, no evidence was led in the petition filed by Sh. Amarnath Ghosh in support of their objections.

60. Final arguments have been heard at length from both the sides. Record, written submissions and citations relied upon have been carefully perused.

61. Before proceeding further to give my issue wise findings, it would be apposite to discuss the evidence brought on record on some important aspects.

APPRECIATION OF LAW AND EVIDENCE AND FINDINGS OF THE

COURT :

Demise of Sh. A.C. Ghosh & Smt. Usha Ghosh :

62. None of the parties to the petitions have disputed the demise of Sh. A. C. Ghosh on 16.12.1996. The death certificate in this regard is proved as Ex. PW1/B. Although the death certificate of Smt. Usha Ghosh has not been proved on record by either of the parties but the factum of her demise on 27.05.1998 is an admitted fact in the pleadings of all the parties.

Class I legal heirs of late Sh. A.C. Ghosh and late Smt. Usha Ghosh :

63. It is also an admitted fact that Late Sh. A. C. Ghosh had expired on 16.12.1996 leaving behind 8 legal heirs including his widow Smt. Usha Ghosh, his sons Sh. Bimalendu Ghosh Dastidaar and Sh. Amarnath Ghosh Dastidaar and his daughters Ms. Geeta Goha Roy, Ms. Dipti Dua, Ms. Tripti Saxena, Ms. Sweta Ray and Ms. Rita Atorthy. Thereafter, Smt. Usha Ghosh expired on 27.05.1998 leaving behind her two sons and five daughters named above. All the legal heirs of Late Sh. A. C. Ghosh and late Smt. Usha Ghosh are parties to the present petitions.

Publication of citation:

64. After filing of the petitions, by orders of the Court citations in all the petitions were duly published in the approved newspaper. No third party other than the parties impleaded in the petitions came forward to file any objections to any of the petitions.

Proof of Will: Legal Principles :

65. The execution of Will has been provided under Section 63 of the Indian Succession Act 1925. It is reproduced herein under for the sake of clarity :-

“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; and

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 been some other person sign the Will in the presence and by the direction of the testator or has received from the testator a personal acknowledgment 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.”

66. As per Section 68 of Indian Evidence Act, one of the attesting witnesses to the Will needs to be examined to prove the Will.

67. The law relating to proof of Will and appreciation of suspicious circumstances surrounding the execution of the Will have been discussed by the Apex Court in a recent judgment titled as *Gurdial Singh (Dead) through LR v. Jagir Kaur (Dead) through LR Civil Appeal Nos 3509-3510/ 2010, order dated 17.07.2025*. The relevant paragraphs of the judgment are reproduced herein under for the sake of clarity:

“A Will has to be proved like any other document subject to the

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requirements of [Section 63](#) of the Indian Succession Act, 1925 and [Section 68](#) of the Indian Evidence Act, 1872, that is examination of at least of one of the attesting witnesses. However, unlike other documents, when a Will is propounded, its maker is no longer in the land of living. This casts a solemn duty on the Court to ascertain whether the Will propounded had been duly proved. Onus lies on the propounder not only to prove due execution but dispel from the mind of the court, all suspicious circumstances which cast doubt on the free disposing mind of the testator. Only when the propounder dispels the suspicious circumstances and satisfies the conscience of the court that the testator had duly executed the Will out of his free volition without coercion or undue influence, would the Will be accepted as genuine. In [Smt. Jaswant Kaur v. Smt. Amrit Kaur and others](#) 2, this Court referring to [H. Venkatachala Iyengar vs. B.N. Thimmajamma & Ors.](#)³ enumerated the principles relating to proof of Will”

10. ***** 2 (1977) 1 SCC 369.

3 1959 Supp (1) SCR 426. “1. Stated generally, a Will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty.

2. Since [Section 63](#) of the Succession Act requires a Will to be attested, it cannot be used as evidence until, as required by [Section 68](#) of the Evidence Act, 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.

3. Unlike other documents, the Will speaks from the death of the testator and therefore the maker of the Will is never available for deposing as to the circumstances in which the Will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last Will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will.

4. Cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the Will. That suspicion cannot be removed by the mere assertion of the propounder that the Will bears the signature of the testator or

that the testator was in a sound and disposing state of mind and memory at the time when the Will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the Will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. It is in connection with Wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last Will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the Will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may raise a doubt as to whether the testator was acting of his own free Will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.” The [Court further held](#): “9. In cases where the execution of a Will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the Will is such as to satisfy the conscience of the court that the Will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the Will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the Will.”

12. Similarly in [Ram Piari vs. Bhagwant & Ors.](#)⁴ this Court held when suspicious circumstance exists, Courts should not be swayed by due execution of the Will alone:

“3.Unfortunately none of the courts paid any attention to these probably because they were swayed with due execution even when this Court in [Venkatachaliah](#) case [AIR 1959 SC 443 :

1959 Supp 1 SCR 426] had held that, proof of signature raises a presumption about knowledge but the existence of suspicious

circumstances rebuts it.....”

13. There is no cavil when suspicious circumstances exist and have not been repelled to the satisfaction of the Court, the Court would not be justified in holding that the Will is genuine since the signatures have been duly proved and the Will is registered one5. Parameters to ascertain ‘suspicious circumstances’ vitiating a Will: 4 (1993) 3 SCC 364.

5 AIR 1962 SC 567, Para 23.

*14. This brings us to the next issue i.e. what are the suspicious circumstances which may vitiate the disposition. In [Indu Bala Bose & Ors. vs. Manindra Chandra Bose & Anr.6](#) the Court held any and every circumstance is not a “suspicious” circumstance. “8. Needless to say that any and every circumstance is not a “suspicious” circumstance. A circumstance would be “suspicious” when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.” The Court quoted the Privy Council’s elucidation in *Hames v. Hinkson* 7 of suspicious circumstances as follows:*

“17.....where a Will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth.” It was again reiterated in [PPK Gopalan Nambier vs. PPK Balakrishnan Nambiar & Ors.8](#) that suspected features should not be mere fantasies of a doubting mind.

“5.....It is trite that it is the duty of the propounder of the Will to prove the Will and to remove all the suspected features. But there must be real, germane and valid suspicious features and not fantasy of the doubting mind.”

68. It is from this prism that we need to examine the execution of the two Wills of late Sh. A. C. Ghosh propounded by Sh. Amarnath Ghosh and Sh. Bimalendu Ghosh and one Will of Late Smt. Usha Ghosh propounded by Sh. Bimalendu Ghosh in these petitions.

69. Let us now examine the evidence produced on record to prove these two Wills.

Technical Objections to the petitions :

70. During the course of arguments, all the parties to the petition have challenged the petition of the other party on the ground that the same is not duly verified by the witness to the Will as required u/s 281 Indian Succession Act. For the sake of clarity Section 281 is reproduced herein under :

*“281. Verification of petition for probate, by one witness to Will- where the application is for probate, the petition shall also be verified by atleast one of the witnesses to the Will (where procurable) in the manner or to the effect following, namely:-
“I (C.D.), one of the witnesses to the last Will and the testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (or the said testator acknowledge the writing annexed to the above petition to be his last Will and testament in my presence)”*

71. The provision about verification of the petition as contained in section 281 is recommendatory in nature and not mandatory. An omission to verify as required under Section 281 of Indian Succession Act is not fatal to the probate proceedings. The verification is to be made when the witness is available. Strict proof of due attestation is absolutely unnecessary if the circumstances warrant a reasonable conclusion that the Will was duly executed. Reliance in this regard is placed upon the decision of Hon’ble High Court of Alahabad in ***“Nand Kishore Rai vs. Bhagi Kuer & Ors” 1957 SCC online All 340*** wherein it has been specifically held as under:

“4. Verification of a petition required u/s 281 is similar to verification required of pleadings, including a plaint, under Order VI, Rule 15 of CPC, and has no greater effect or value. Omission to verify, or defective verification of, a pleading is a mere irregularity within Section 99 of CPC and is never fatal. The provision of Section 281 of the Succession Act is less drastic than that of Order VI Rule 15 and an

omission to verify, or a defective verification of, a petition for probate cannot have a more serious effect than that of a plaint. A pleading must be verified by a party or by some other person acquainted with the facts of the case; a petition for probate is, however, required to be verified by an attesting witness. A petitioner for probate has no legal authority over an attesting witness and cannot compel him to verify the petition.

5. He may be bound to get the petition verified but an attesting witness is not bound to verify it at his instance and he would be helpless if the latter for any reason refuses to verify it even though it contains nothing but the facts. Therefore, the legislation has deliberately laid down that the petition should be verified only if an attesting witness is procurable, that is, can be procured by petitioner for the purpose of verification. If a petition is not verified by an attesting witness, the petitioner can always excuse himself on the ground that he could not procure any attesting witness to verify it. I, therefore, respectfully agree with the view expressed in “Rama Sinha vs. Murtibai, 68 Ind Cas 940 (AIR 1923 Nag 41) (A), that the provision in Section 281 is merely directory and not mandatory, that is, non compliance of it will not lead to the rejection of the petition.”

72. Thus, Section 281, Indian Succession Act is a rule of procedure designed to facilitate the Court’s process rather than a strict condition precedent for maintaining the petition. Substantial verification of a petition and material conformity with Section 281 is sufficient compliance of Section 281 of Indian Succession Act.

73. In the present case both Sh. Amarnath Ghosh and Sh. Bimalendu Ghosh have vehemently argued that the petition filed by the other is bad due to improper verification by the attesting witness as required under Section 281, Indian Succession Act. It has been vehemently argued that non-verification as required under Section 281 goes to the very root of the matter and makes the probate petition *void ab initio*. However, none of the parties have relied upon any decision of the superior Courts in which a

defect in the verification as required under Section 281, Indian Succession Act has been held to be fatal to the petition irrespective of the evidence adduced in the matter. It is also important to go through the verification annexed to all the petitions to get a clear understanding of the arguments addressed by the parties and coming to a reasonable decision backed by legal reasoning.

74. In the petition filed by Sh. Amarnath Ghosh, one of the attesting witness to Will dated 10.05.1996 namely Sh. Ravi Mohan Anand has verified the petition in following terms :

“I, Ravi Mohan Anand S/o Major R.N. Anand, R/o D-11, Vivek Vihar, Delhi, one of the attesting witnesses of the last Will and testament dt. 10.05.1996 of the testator Mr. Amulya Chandra Ghosh , I declare that I was present and saw the said testator affix his signature thereon.”

75. The verification is duly signed by the witness on the date of signing of the petition itself i.e. 26.03.2003. After going through this verification, it can safely be held that there is no defect in the said verification to give a finding that the petition is bad for want of proper verification under Section 281 of Indian Succession Act.

76. In the petitions filed by Sh. Bimalendu Ghosh the verification by the attesting witnesses is by way of affidavits annexed to the petitions. In petition bearing PC No.42197/2016 filed in respect of Will dated 07.08.1986 and Codicil dated 31.12.1989 both executed by testator Sh. A. C. Ghosh, the affidavit of the witness to the Will and Codicil namely Sh. B. P. Ganguly has been annexed wherein the witness has deposed that he is

a witness to the said Will and Codicil and the Will and Codicil were duly signed by the testator in his presence as well as in the presence of the other witness Sh. J. Bhattacharjee. In petition bearing PC No.42195/2016 filed in respect of Will dated 12.01.1998 executed by testatrix Smt. Usha Ghosh, the affidavits of both the witnesses to the Will namely Sh. B. P. Ganguly and Sh. N. C. Chatterjee have been annexed wherein the witnesses have deposed that they were witnesses to the said Will and the Will was duly signed by the testatrix in their presence. In my opinion, even these affidavits of attesting witnesses filed by Sh. Bimalendu Ghosh along with his petitions are sufficient compliance of provisions as contained in Section 281, Indian Succession Act.

77. In view of the reasons given above, no ground is made out for discarding any of the petitions under consideration at the threshold on these technical objections taken by the parties.

Limitation :

78. Although no issue regarding any of the petition being barred by Limitation has been framed. However during the course of arguments the parties have vehemently argued that the petition of the other is barred by limitation. Since, the issue of limitation is a legal issue, I deem it appropriate to give my findings on this issue even without framing of a specific issue to this effect.

79. It is a well known fact that to get probate or letter of administration

in respect of a Will is not Mandatory in Delhi and the question of filing such petition under Indian Succession Act arises only if a formal probate or letter of administration is required for any purpose or if the execution of the Will is disputed or controverted by anyone or the rights of any beneficiary arising out of the Will in question are in any manner challenged by anyone.

80. An application for grant of probate or letter of administration is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed. Reliance in this regard is placed upon the decision of the Apex Court in *Kunvar Jeet Singh vs Kirandeep Kaur, (2008) 8 SCC 463*.

81. In *Yogesh Duggal & Ors. Vs State & Ors., 2011 (123) DRJ 638*, Hon'ble High Court of Delhi has held that Article 137 of Schedule to Limitation Act 1963, which is a residuary article and prescribes the period of limitation of 3 years for filing an application which is to be reckoned from the date the right to apply accrues, is applicable to a person propounding a Will.

82. As discussed above, for filing a petition under Indian Succession Act, the right to apply shall accrue from the time when the Will is objected

to by any other person or the beneficiary under the Will is in any manner restricted from reaping the benefits that flow to him arising out of the Will in question. Accordingly, the period of limitation of 3 years shall also be reckoned from the said date only.

83. Petitioner Amarnath Ghosh had filed the probate petition on 26.03.2003 in respect of a Will dated 10.05.1996 allegedly executed by testator Sh. A. C. Ghosh. Sh. A. C. Ghosh had admittedly expired on 16.12.1996. Accordingly, Sh. Bimalendu Ghosh has argued that the petition filed by Amarnath Ghosh after more than 6 years of demise of Late Sh. A. C. Ghosh is miserably barred by limitation. However, counter argument of Amarnath Ghosh is that there was no dispute from any end regarding the execution of Will dated 10.05.1996 by Late Sh. A. C. Ghosh. He had duly informed all the LRs of Late Sh. A. C. Ghosh regarding the said Will through post but none of the LRs raised any objections to the said Will. However, when he went to the Authorities for mutation of the property in his name, he was advised to get a probate of the Will and thereafter, he filed the present petition for issuance of letter of administration/probate in respect of Will dated 10.05.1996.

84. Since, the objection of limitation was neither taken by Sh. Bimalendu Ghosh or other respondents in their objections nor any issue on this aspect was framed, no evidence has been led in this regard by any of the parties. Accordingly, there is nothing on record to presume that there was any prior dispute to the Will dated 10.05.1996 raised by any of the

other LRs of Late Sh. A. C. Ghosh prior to 26.03.2000 i.e. more than 3 years prior to filing of the present petition. Even, Amarnath Ghosh has not led any evidence to show as to when the concerned Authorities had required him to get the Will dated 10.05.1996 probated. In the absence of any evidence to the contrary, the petition filed by Amarnath Ghosh in respect of Will dated 10.05.1996 cannot be said to be barred by limitation.

85. As regards the petitions filed by Sh. Bimalendu Ghosh, the same have been filed in respect of Will dated 07.08.1986, Codicil dated 31.12.1989 of Late Sh. A. C. Ghosh and Will dated 12.01.1998 of Late Smt. Usha Ghosh. These petitions have been filed in 2005 while Sh. A. C. Ghosh expired on 16.12.1996 and Smt. Usha Ghosh expired on 27.05.1998. It is argued by Ld. Counsel for the petitioner Amarnath Ghosh that these petitions are filed even more belatedly than the petition filed by him and are, thus, barred by limitation. It is also argued that own witness of Sh. Bimalendu Ghosh, Ms. M. Jayasree/RW-6 has testified that at the time of alleged opening of the Will and Codicil of Late Sh. A. C. Ghosh on 06.12.1997, Amarnath Ghosh had created a scene and shown strong objection to the Will. This testimony of RW-6 clearly shows that the alleged Will dated 07.08.1986 and Codicil dated 31.12.1989 were disputed by Amarnath Ghosh way back on 06.12.1997. However, still the petition for obtaining probate qua them was filed only on 06.02.2006 i.e. after more than 8 years and thus, the petition filed by Sh. Bimalendu Ghosh is hopelessly barred by limitation.

86. *Per contra*, it is submitted by Ld. Counsel for Sh. Bimalendu Ghosh that the Will and Codicil of Late Sh. A. C. Ghosh were made known to Amarnath Ghosh way back on 06.12.1997 as deposed by Bimalendu Ghosh as well as Ms. M. Jayasree/RW-6. However, at that time, he never disclosed about the alleged Will dated 10.05.1996. Any scene created by him on 06.12.1997 as testified by RW-6 was only momentary and since he had not put forth any subsequent Will nor taken any action against the Will and Codicil dated 07.08.1986 and 31.12.1989 respectively, the petitioner Bimalendu Ghosh did not feel threatened in any manner that his rights under the Will were being opposed by Amarnath Ghosh. Accordingly, he did not file any petition for grant of probate or letter of administration. Even the Will dated 12.01.1998 of Late Smt. Usha Ghosh was made known to Amarnath Ghosh on 31.11.1999 as per the testimony of Bimalendu Ghosh/RW-2 as well as Ms. M. Jayasree/RW-6. Since, no strong disputes regarding these Wills were raised by Sh. Amarnath Ghosh or any other LRs of Late Sh. A. C. Ghosh and Late Smt. Usha Ghosh nor there was any intense rejection or vehement denial of the same, the petitioner Bimalendu Ghosh did not feel the need of filing any petition under Indian Succession Act. However, when Bimalendu Ghosh was served with a notice of the petition filed by Amarnath Ghosh, he came to know about the forged and fabricated Will dated 10.05.1996 being propounded by him as the last and final testament of Late Sh. A. C. Ghosh. Accordingly, he filed the petitions for grant of probate within the period of limitation of 3 years as required under Article 137 of Schedule to the Limitation Act. Thus, the petitions filed by Bimalendu Ghosh are well

within the period of limitation.

87. Even at the sake of repetition, it is again reiterated that since no issue on the point of limitation was framed nor the parties have taken any objections regarding the petitions of other person being barred by limitation, no evidence on these aspects have been led. Although, there is statement of RW-6 Ms. M. Jayasree during her cross-examination that Sh. Amarnath Ghosh had created a scene when he was informed about the Will and Codicil of Late Sh. A. C. Ghosh on 06.12.1997 but there is no evidence on record to show that the alleged objection to the Will made by Sh. Amarnath Ghosh on 06.12.1997 was of an extent disputing and challenging the validity of the Will and Codicil itself. Rather, the voluntary statement given by RW-6 in this regard shows that Sh. Amarnath Ghosh was annoyed and questioned how his father could have executed such a Will. There were no subsequent litigations of any manner initiated by Amarnath Ghosh. In fact, Amarnath Ghosh during entire trial has disputed even his presence on 06.12.1997 at the time of opening of the alleged Will and Codicil of Late Sh. A. C. Ghosh as well as on 31.11.1999 at the time of alleged opening of Will of Late Smt. Usha Ghosh. In these circumstances, there is no evidence on record to hold that the petitioner Bimalendu Ghosh was aware about the dispute being raised by Amarnath Ghosh to the Wills propounded by him anytime prior to the receipt of summons of the petition filed by Sh. Amarnath Ghosh. Sh. Bimalendu Ghosh has filed his petitions within 3 years of his having received the summons of the petition filed by Sh. Amarnath Ghosh and accordingly, even his petitions cannot be said to be barred by Limitation.

88. In view of the reasons and findings given above, I have no hesitation in holding that none of the petitions pending before the Court are liable to be dismissed on the ground of being barred by limitation. The objections to this effect raised by parties during final arguments are thus, rejected and all three petitioner are held to be within the statutory period of Limitation.

Appreciation of evidence of Hand Writing Experts examined in respect of Will dated 10.05.1996 allegedly executed by Testator Sh. A.C. Ghosh propounded by Sh. Amarnath Ghosh.

89. Petitioner Amarnath Ghosh has propounded Will dated 10.05.1996 alleging it to be a last and final testament of Sh. A. C. Ghosh and has sought Letter of Administration in respect of the said Will. Petitioner Bimalendu Ghosh has challenged the said Will since the very beginning on the ground that the same is a forged and fabricated document and does not bear the signatures of Late Sh. A. C. Ghosh. The contention of the defendant in this regard even led to registration of FIR bearing no.171/06 PS C R Park (Crime Branch) under Section 420/467/468/471/120 B IPC titled as “*State vs Amarnath Ghosh & Ors.*” wherein Amarnath Ghosh and the two attesting witnesses to Will dated 10.05.1996 are facing trial for charges of forgery. Accordingly, various experts have been examined by both the parties to prove or disprove the genuineness of the signatures of Sh. A. C. Ghosh on Will dated 10.05.1996. Before proceeding further, I deem it appropriate to consider and give my findings on the expert opinions in this regard relied upon by both the parties.

90. The propounder of the Will dated 10.05.1996, Sh. Amarnath Ghosh took permission from the Court to get the Will examined by a hand writing expert. Permission in this regard was granted vide order dated 15.11.2007. Pursuant to the said directions, the Will dated 10.05.1996 (Ex.PW1/A) was examined by Sh. T. R. Nehra, who filed his report dated 01.12.2007 giving an opinion that the questioned original signatures appearing on the Will dated 10.05.1996 were written by Late Sh. A. C. Ghosh who also wrote standard original signatures provided to him. The standard signatures included the signatures of Late Sh. A. C. Ghosh on Will dated 07.08.1986 and the Codicil dated 31.12.1989 relied upon by Sh. Bimalendu Ghosh. However, Sh. T. R. Nehra could not enter into the witness box due to his demise as informed by petitioner and recorded in order sheet dated 11.03.2008. Accordingly, the report of Sh. T. R. Nehra, Handwriting Expert cannot be read in favour or against any of the parties as he never stepped into the witness box and has not been subjected to cross-examination.

91. Thereafter, vide order dated 11.04.2008, on an application of the petitioner, he was allowed to examine any other handwriting expert. Pursuant to the said permission, petitioner Amarnath Ghosh got the Will (Ex.PW1/A) examined by Handwriting Expert Sh. B. N. Shrivastva. Sh. B. N. Sharivatva filed his report dated 04.07.2008 giving an opinion that the questioned signatures of Sh. A. C. Ghosh on Will dated 10.05.1996 were genuine and written by the writer of the admitted/comparative signatures marked as C-1 to C-5 and B-1 to B-9. The comparison was

made with the signatures of Sh A. C. Ghosh on the Will dated 07.08.1986 and Codicil dated 31.12.1989 which are propounded by Sh. Bimalendu Ghosh (C-1 to C-5) and to certain indemnity bond, affidavit, undertaking all dated 15.03.1989, FORM A, DDA Challans (B-1 to B-9). Sh. B. N. Shrivastva was examined by the petitioner as PW-6 and he proved his report as Ex.PW6/1. Along with his report, Sh. B. N. Shrivastva./PW-6 also relied upon documents Ex.PW6/2 to Ex.PW6/19 which were the photo enlargement of questioned comparative and admitted signatures along with their negatives. The exhibition of these documents was objected to by Ld. Counsel for Sh. Bimalendu Ghosh at the time of tendering of these documents by PW-6 and the objections were left open to be decided at the stage of final arguments. In my opinion, the photo enlargement of signatures and negatives marked as Ex. PW6/2 to Ex.PW6/19 are a part and parcel of the report of handwriting expert (Ex.PW6/1) and are required to be looked into for proper appreciation of the report of handwriting expert (Ex.PW6/1). Without looking at these documents, it would be impossible to appreciate the report Ex.PW6/1 as well as the testimony of Sh. B. N. Shrivastva/PW-6. These documents were not new documents filed by the petitioner Amarnath Ghosh without taking permission from the Court but were a part and parcel of the report (Ex.PW6/1). The objections against these documents taken by Sh. Bimalendu Ghosh are accordingly, dismissed and it is held that these documents that are Ex.PW6/2 to Ex.PW6/19 shall be read in evidence.

92. Now, let us appreciate the evidence of Handwriting Expert Sh. B. N. Shrivastva who has been examined as PW-6 as well as his report Ex.PW6/1. In his cross-examination, PW-6 stated that admitted documents mentioned in paragraph no.3 in his report that are B-1 to B-9 were provided to him by Amarnath Ghosh while regarding other documents (C-1 to C-5) he had taken photographs from Court record but he could not tell as to when and with whose permission such photographs were taken by him from the Court record. He denied the suggestion that all the photographs were handed over to him by petitioner Amarnath Ghosh. When confronted with a note on page no.2 of his report to the effect “*all these documents bearing signatures were made available for examination and photographs by Amarnath Ghosh Dastidar*”, he clarified that this note was in respect of documents B-1 to B-9 and not other documents. During his cross-examination, PW-6 was confronted with various differences in signatures on questioned documents when compared to comparative and admitted signatures. Although, he admitted the differences but denied the suggestions that there were several dissimilarities and diversions in signatures Q-1 to Q-3 and C-1 to C-5.

93. Pitted against this report of Sh. B. N. Shrivastva/PW-6 is a contradictory report furnished by Sh. S. Ahmed, Handwriting Expert from GEQD Shimla, who has been examined by Sh. Bimalendu Ghosh as RW-10. His report is proved as Ex.DW9/1 wherein he had opined that the admitted signatures A-1 and A-2 and comparative signatures C-1 to C-20 do not match with the questioned signatures on Will dated 10.05.1996

which are Q-1 to Q-3. The original Will dated 10.05.1996 along with certain documents were sent to GEQD Shimla by the investigating agency in case FIR No.171/2006 after getting the same released from this Court by the concerned IO.

94. Prior to going through the report of GEQD Shimla (Ex.DW9/1), it is apposite to mention that Bimalendu Ghosh has also got the Will dated 10.05.1996 (Ex.PW1/A) examined through another Handwriting Expert namely Sh. R. N. Abhilashi (RW-4) who also gave a report to the effect that the signatures on the Will (Ex.PW-1/A) were forged. Sh. R. N. Abhilashi stepped into the witness box as RW-4 and proved his report as Ex.RW4/1. He was also partly cross-examined on behalf of Sh. Amarnath Ghosh. However, thereafter, he failed to appear for completion of his cross-examination and accordingly, his incomplete testimony cannot be read in evidence.

95. Let us now consider the testimony of RW-10/Sh. S. Ahmed, Handwriting Expert from GEQD Shimla regarding his opinion given vide report (Ex.DW9/1). Admittedly, GEQD Shimla is a government agency whose assistance was taken by the IO of the Criminal Case registered against Amarnath Ghosh. It is not a privately engaged Handwriting Expert by either Amarnath Ghosh or Bimalendu Ghosh. His original report was filed before Ld. Criminal Court wherein trial of the FIR is going on and the certified copy has been proved on record as Ex. DW9/1.

96. Ld. Counsel for the petitioner Amarnath Ghosh has strongly argued against this report referring to the request letters dated 14.02.2006 and 16.03.2006 whereby examination of the documents by the Handwriting Expert was sought by the IO. It is stated that as per the note annexed with Letter dated 16.03.2006, firstly the comparative signatures C-1 to C-8 received from complainant Bimalendu Ghosh were required to be compared with the admitted specimen signatures C-9 to C-20 given by Amarnath Ghosh and an opinion was sought whether C-1 to C-8 were written by the same person who wrote signatures C-9 to C-20. Only thereafter the questioned signatures Q-1 to Q-3 and admitted signatures A-1 and A-2 were required to be compared with comparative signatures C-1 to C-20. However, in his report (Ex.DW9/1), GEQD Shimla did not give any opinion as to if C-1 to C-20 were written by the same person. Accordingly, the report of GEQD Shimla (Ex.DW9/1) is alleged to be highly defective and cannot be relied upon to give a finding that the questioned signatures on the Will (Ex.PW1/A) were forged. It is also submitted that Sh. S. Ahmed/DW-10 has failed to explain the reasons given by him in his report (Ex.DW9/1). Even otherwise, the said report is firstly signed by his Senior Sh. Mohinder Singh, Dy. GEQD, however, the reasons, if any, given by him for coming at the findings in the report have not been mentioned or annexed to the report. Sh. Mohinder Singh has also not been examined as a witness to prove the report (Ex.DW9/1). Accordingly, the report of GEQD is alleged to be non-reliable.

97. *Per contra*, Ld. Counsel for Bimalendu Ghosh has placed strong reliance on the report of GEQD Shimla (Ex.DW9/1). It is submitted that the said report is of an independent Government Agency engaged by an independent Investigating Authority and there is no reason for discarding the same. RW-10/Sh. S. Ahmed has been subjected to lengthy cross-examination not only in the criminal case (Ex.DW9/R2D) but also in the present case. However, he has passed the test of lengthy cross-examination with flying colours and no contradictions in his report could be brought on record by Ld. Counsel for the petitioner Amarnath Ghosh. He has categorically explained that the differences found in the signatures of Sh. A. C. Ghosh on various documents were not natural variations due to change of pen, paper or lapse of time but were specific differences which point towards the fact that the questioned signatures and standard signatures were not written by the same person. Accordingly, it is submitted that the testimony of Sh. S. Ahmed/RW-10 and his report Ex.DW9/1 is completely reliable and is sufficient to give a finding that the signatures of Sh. A. C. Ghosh on the Will (Ex.PW1/A) are forged.

98. I have heard the submissions made by both the parties and carefully perused the reports of Handwriting Experts that are Ex.PW6/1 given by Sh. B. N. Shrivastva/PW-6 and Ex.DW9/1 given by GEQD Expert examined as RW-10.

99. It is trite law that reports from Government Forensic Science Laboratories are considered more authoritative and objective. Such reports

are admissible in evidence under Section 293 Cr.P.C. even without the expert appearing as a witness. Private experts can be engaged by the parties but their reports are often viewed with skepticism, sometimes regarded as tailored to the hiring party. For a private report to be admitted, the expert's qualification and methodology must be proven in Court. Moreover, Handwriting Expert opinion, whether Government or Private, is considered a weak corroborative evidence and not a conclusive proof. It cannot be relied upon blindly. If both Private and Government Experts provide contradictory reports, the Court has to examine the reasoning behind each. If neither is convincing, the Court may disregard both. Ultimately, the Court has to decide which report is not credible based on the detailed scientific reasoning provided rather than just the conclusion.

100. It has been held by Hon'ble High Court of Jharkhand in ***"Chetan Sharma vs State of Jharkhand, CRMP No. 2764/2023 order dated 08.05.2024"*** that handwriting expert's opinion, being not itself a substantive evidence, when such opinion is obtained unilaterally behind the back of the other party, without the intervention of the Court, the veracity of the such report is of little evidentiary value.

101. In terms of these settled propositions of law, let us now examine the reports of the two Handwriting Experts that are proved on record.

102. The report relied upon by Sh. Amarnath Ghosh is a report of a private Handwriting Expert Sh. B. N. Shrivastva. Prior to taking an opinion from Sh. B. N. Shrivastva, Sh. Amarnath Ghosh had taken permission of the Court to examine a Handwriting Expert vide order dated 11.04.2008. However, there is no order sheet on record to show that the photographs of the disputed or admitted signatures were taken by the Handwriting Expert Sh. B. N. Shrivastva from the Court record. There is an application dated 30.04.2008 filed by Amarnanth Ghosh seeking permission to take photographs of the disputed and admitted signatures of the testator which is Ex.PW6/DA. The said application is allowed on 01.05.2008 as per noting made thereon. There is also a noting in pencil at point X on the same as “photo taken” bearing signatures of PW-6. But there is no corresponding order sheet of the Court nor counter signing by Ld. Presiding Officer or Court Staff against the said noting at point X. There is no clarity from the application (Ex.PW6/DA) or noting at point X as to photographs of what documents were taken by PW-6. Although, Sh. B. N. Shrivastva/PW-6 has deposed that he had taken the photographs of the disputed and admitted signatures from the Court record. However, he did not depose about the exact documents of which photographs were taken by him from the court record. Even the report (Ex.PW6/1) as well as evidence of PW-6 of Sh. B. N. Shrivastva is silent on this aspect.

103. In addition to this, PW-6 Sh. B. N. Shrivastva, though deposed regarding his one year certificate course of Forensic Science from Delhi University and his training under Late Sh. M. K. Mehta, an Expert, but he

has failed to produce any document in this regard. The report (Ex.PW6/1) although mentions that the documents were examined with the help of Scientific Instruments but the description and details of the instruments and methods used in examination are not detailed in the report (Ex.PW6/1) or evidence affidavit of PW-6 (Ex.PW6/A). Accordingly, PW-6 has failed to prove not only his qualification as Handwriting Expert but also the scientific methods used by him for examining the documents.

104. Coming to the reasoning given by Sh. B. N. Shrivastva in his report (Ex.PW6/1). Perusal of the report (Ex.PW6/1) shows that the expert had given as many as seven reasons for his opinion that the questioned signatures on the Will dated 10.05.1996 were made by the same person who had written the admitted signatures. The reasoning's given in the report are reproduced herein under for the sake of clarity :

(a) The examination of the questioned signatures show that they have been written with good speed and flow and by a person who is well versed with writing process. The questioned signatures are free from the defects of forgery such as faulty pen-lifts, retouching, tremors, hesitations, pen-pauses and slow and drawn movement.

An inter-se comparison of these questioned signatures show natural variations as are always found in genuine signatures.

(b) The examination of the admitted/comparative signatures show that they like the questioned, have been written with good speed and flow. They too show natural variations when compared inter-se.

(c) Both the questioned and the admitted comparative signatures have been written with a combined action of the wrist and the fingers.

(d) In the matter of SLANT, it may be seen that it is forwards and ALIGNMENT is of ascending type both in the questioned and the admitted/comparative signatures.

(e) The RELATIVE SIZING, POSITIONING and SPACING between the letters, is found similar in the questioned and the admitted/comparative.

(f) The PICTORIAL appearance as well as the manner of formation of

letters, is found similar in the questioned and the admitted/comparative within the range of natural variations No fundamental dis-similarities are found in-between the questioned and the admitted/comparative signatures. The similarities have been demonstrated on the photographic enlargements and they are described as under-

The letter 'A' has 'big' middle loop formation and this is in continuation with the second vertical stroke. The formation of this 'loop' is anti-clockwise both in the questioned and the admitted/comparative signatures. The top of the letter 'A' is angular.

The next letter 'C' is written in continuation with middle 'loop' of 'A'. The start of letter 'C' has blind loop formation The body part of letter is round in questioned and most of the admitted/comparative signatures.

The upper part of letter 'G' has loop formation and the ending of the letter is vertically placed both in the questioned and the admitted/comparative.

All other letters of word 'Ghosh' have been written together The 'hump' of letter 'h' is 'angular'. The vertical stroke of letter 'h' has no loop formation in questioned and many of the admitted/comparative signatures. The 'loop' of letter 'o' is represented by a small vertical stroke. The body part of letter 's' has curvature and there is either a blind loop or retrace in the lower portion of this letter. The last letter 'h' has a 'angular hump' and 'flourish' is found in this letter both in the questioned and the admitted/comparative signatures.

(g) The Line Quality of the questioned signatures is good, however there is some ink spreading in the questioned signatures Q-3, as it is on the fold line. The line quality of the admitted/comparative signatures is also good. The angles are sharp and curves well made, in all these signatures, including the questioned.

105. On the basis of these reasons, PW-6 opined that signatures of Sh. A. C. Ghosh on Will dated 10.05.1996 and marked as Q-1 to Q-3 are genuine and written by the writer of admitted/comparative signatures marked as C-1 to C-5 and B-1 to B-9.

106. However, during his cross-examination, PW-6 was confronted with various differences in the questioned signatures and admitted/comparative signatures. His responses given to such confrontations are reproduced

herein under for the sake of clarity :

"It is true that balloon in writing 'A' in B-8 is outside left stroke of letter while in Q 1 it starts from the second stroke of letter 'A' Vol, in B-8 also it starts from base of second stroke of letter. It is wrong to say that the start of balloon is from middle of letter 'A' in Q 1. It is true that the connecting stroke between letters A and C is in ascending order in Q 1. It is wrong that in B-8 the connecting stroke is straight. Vol, it is also in ascending order. In Q 1 the degree of ascending is more than B-8. It is true that the top of letter 'C' in Q 1 makes a blind loop. In Q 2 blind loop is apparent in letter C and same in Q 3 a loop is found. It is wrong to say that in B 8 eyelet is found in letter C and not a blind loop. My reply is same about B 1 also. It is true that a slight triangular form (dipping) is B8 and B 1 in letter C. It is true that in Q 1 and Q 2 and Q 3, the connecting strokes between Letters A and C are continuous and uniform. It is wrong to suggest that a triangular dip in front in alphabet C in document B8 and B1 cannot be formed in one continuous uniform stroke of pen. It is wrong to say that tip of letter A is round in Q1-Q3. Vol, it is angular. It is wrong to say that tip of letter A in B 1 and B 4 is conish and arrowlike and not angular. Vol, it is angular. There is some variation in the size of loop in letter G in Q 2 and B1. It is wrong to say that there is difference of formation in lower part of alphabet in G in Q 2 and B1. It is wrong to say that formation of letter G in B 1, B4 and B 5 started from the lower part of letter while in Q1-Q 3 it started from middle portion. It is wrong to suggest that hump in letter H is different in questioned and comparative signatures is different. It is correct that in C 4, C2 and C 1 the first letter A has two verticle strokes in its initial portion. In Q 3 two prominent strokes are found. In Q 1 and Q 2 same are not found. The letter after letter 'h' in Q1 - Q 3 is in abbreviated form and is 'O'.

Q. Can it be read as 'i'?

Ans. It cannot be read so since top dot of 'i' is not available.

*It is true that there is a gap but it is slight between starting and ending point of letter 'O' in document C-4. In C 1 it is more prominent. **It is true that in Q1-Q 3 the letter S starts from the bottom of earlier letter i.e. 'O'.** It is true that letter S starts in C 4 and C1 from the top of previous letter 'O'. **It is true that letter S in Q1-Q 3 comes down from top to bottom.** It is wrong to say that it does not come down in the same way in document C 4, C2 and C 1. Vol, it is in round shape in these documents. It is correct that end of letter of S makes a blind loop in Q1 Q3. In C4 and C2 a blind loop is found in letter 'S' while in C1 there is open loop formation in letter S. It is true that in last letter H in there is no loop formation in vertical part. In C2 and C4 a loop is found in vertical part of H while C1 there is small loop at the top. It is wrong to*

say that there are several dissimilarities and divergence in documents Q1-Q3 and C1 to C5.”

107. Perusal of this cross-examination of PW-6 clearly shows that he was confronted with various differences in questioned signatures when compared to admitted/comparative signatures. Although, he admitted some of the differences pointed out but denied the suggestions that his report was incorrect due to apparent differences in the signatures.

108. After going through the entire report of PW-6 Sh. B. N. Shrivastva as well as his evidence, I am of the opinion that little reliance can be placed on his report (Ex.PW6/1), primarily for the reason that he is a private handwriting expert hired by Sh. Amarnath Ghosh giving a report in favour of Sh. Amarnath Ghosh. He has failed to prove his qualifications and experience to depose as a Handwriting Expert as well as the scientific methods used by him for examining the documents. He has also failed to prove as to if the photographs of questioned and admitted signatures were taken by him from the Court record with the permission of the Court. He has also failed to explain various apparent differences in the questioned and admitted signatures when they were specifically pointed out to him during his cross-examination. His report does not appear to be very credible and based on detailed scientific reasoning. For these reasons, I do not consider it safe to rely upon the Handwriting Expert report (Ex.PW6/1) to corroborate the case of the petitioner Sh. Amarnath Ghosh that the signatures of Late Sh. A. C. Ghosh on Will dated 10.05.1996 (Ex.PW1/A) are genuine signatures.

109. The second report before this Court is that of a Government Examiner from GEQD Shimla which is Ex.DW9/1. He is an independent Handwriting Expert whose services were availed neither by Sh. Amarnath Ghosh nor by Sh. Bimalendu Ghosh or any other parties to the present petition. Rather, the services of Handwriting Expert from GEQD, Shimla were taken by the Investigating Agency of case FIR No.171/06 PS C. R. Park (Crime). Thus, being an independent agency, the report of GEQD, Shimla is slightly at a better footing than that of Sh. B. N. Shrivastva/PW-6. Moreover, the documents sent to GEQD, Shimla for comparison were the original Will dated 10.05.1996 after being released for the purpose from this Court by the concerned IO as well as certain other admitted signatures of Late Sh. A. C. Ghosh obtained from both Sh. Amarnath Ghosh as well as Sh. Bimalendu Ghosh. This also indicates that the documents sent for comparison were not manipulated by any of the parties to the present petition making the report more credible. In addition to this, the expert who had proved the GEQD, Shimla report Dr. S. Ahmed (RW-10) is a Government Employee working as a Handwriting Expert in Government of India Laboratory at Shimla and accordingly, there is no doubt about his qualification and experience to examine the documents and appear as a witness to prove his report. This witness was also examined as PW-10 before the Criminal Court dealing with case FIR No.171/2006 PS C R Park and his concerned testimony is proved as Ex.DW9/R2D (colly). Perusal of the same shows that he had categorically stated in his cross-examination that though he did not have any specific academic qualification in the Forensic Science, however, he had received in service

training in GEQD, Calcutta in examination of Forensic Documents. There is no counter suggestions to him during his cross-examination.

110. Coming to the report of GEQD, Shimla (Ex.DW9/1), it is a report given by two experts namely Sh. Mohinder Singh, MSc, Dy. Government Examiner and Dr. S. Ahmed, MSc. PhD, Assistant Government Examiner. In the report, it is opined that the person who wrote the admitted and comparative signatures A-1, A-2, C-1 to C-20 did not write the questioned signatures Q-1 to Q-3. The reasons for the opinion annexed with the report are signed by Dr. S. Ahmed, which are reproduced herein under :

"My opinion that " The person who wrote the red enclosed signatures stamped and marked A1, A2 and C1 to C20 did not write the red enclosed signatures similarly stamped and marked Q1 to Q3" is based on the differences found in the basic and fundamental handwritings characteristics such as movement, speed, skill, slant, spacing, alignment, size and proportion of letters etc. in both the questioned signatures and standard signatures.

The questioned signatures are slow and drawn in their execution, show defective line quality with slow and hesitation strokes which are characteristics of the act of imitation whereas the standard signatures are freely written and show uniform line quality with smooth strokes. In addition to these, other significant differences are also observed between the questioned and standard signatures in the detailed execution of various characters such as nature of commencement of letter 'A', relative size of its body part and nature of its apex, shape and size of its horizontal stroke as observed in questioned signatures is nowhere observed in standard signatures; nature of commencement of subsequent letter 'C', nature of its body part; manner of execution of subsequent letter representing 'G', shape of its body part; manner of execution of subsequent letter 'h', nature of its shoulder; manner of execution of subsequent letter 'o', shape of its oval; manner of execution of subsequent letter 's', nature of its body part and nature of body part of terminal letter 'h' along with its descending nature as observed in questioned signatures is also nowhere observed in standard signatures.

The aforesaid divergences are fundamental in nature and beyond the

range of natural variations and intended disguise and when considered collectively they lead me to the above said opinion?”

111. In the report Ex.DW9/1, again it is simply mentioned that the examination was done with the help various scientific aids available in the Government of India Laboratory at Shimla. However, the details of the scientific aids used in this regard have not been clarified. Dr. S. Ahmed who was examined RW-10, however, clarified in his cross-examination that he had used the scientific devices like Video Spectral, Comparator, Stereo Zoom Microscope and Hand Magnifier while doing the comparison and examination of documents. This fact was also volunteered by him in his cross-examination conducted before Ld. Criminal Court and no counter evidence has come on record. Accordingly, the testimony of Handwriting Expert Dr. S. Ahmed/RW-10 appears to be much more credible and reliable than the testimony of PW-6.

112. RW-10 was also confronted with certain similarities in the questioned and admitted/ comparative signatures in his cross-examination which he duly explained. He also testified that the natural variations in questioned and standard signatures *interse* were found different. Relevant portion of his cross-examination is reproduced herein under :

Q:- I put it to you that natural variation is present in both questioned and standard signatures. What do you have to say?

A:- I have examined both the questioned and standard signatures and I found natural deviations in both. Since I was comparing both the questioned and standard signatures, I had checked natural variations in both interse and found that the natural deviations in questioned signatures were different when compared to standard signatures.

Q:- Have you mentioned natural variations in your opinion?

A: Yes I have mentioned about the same in my detailed reasons.It is

wrong to suggest that I have not mentioned anything about natural variations in my opinion or detailed reasons.

Q:- I put it to you that variations in signatures made by the same person may occur due to use of different pens, papers and inks. What do you have to say?

A:- It is incorrect. The individual features of signatures of an individual do not change with change of pens, papers and inks. Although, there can be some variations because of the said changes. It is wrong to suggest that the hand writing variations are natural and can occur due to use of different pens, papers and inks.

Q. I put it to you signatures Q1, Q2 and Q3 shows similarity with C9, C10, C17 and A2 as the letter A has retraced left arm, curved apex formation, centre to left ward loop formation in cross bar execution with right upward terminal stroke. What do you have to say?

A:- It is incorrect. The questioned signatures Q1 to Q3 are slow in their execution, show defective line quality which characteristics the act of imitations.

Q:- I put it to you that the comparison is not based on contemporary signatures of Late Sh. A. C. Ghosh. What do you have to say?

A:- The supplied material is sufficient to reach the conclusion and gave my opinion.

Q:- Do you mean to say that whether the signatures for comparison are contemporary or old makes no difference?

A:- In the present case, material supplied was sufficient to reach to the conclusion.

Q:- I put it to you that the formation of alphabet 'G' at point A2 (letter dated 28.08.1991) and C1, C3, C5 to C8 being part of the report shows the dissimilar loop body formation. What do you have to say?

A:- No. Natural variations is the essential part of the hand writing covered under the 'concept of natural variations'.

Q:- I put it to you that the formation of letters 'os' at point A2 (letter dated 28.08.1991) and C3, C5 to C8 being part of the report are dissimilar. What do you have to say?

A:- No. Natural variations is the essential part of the hand writing covered under the 'concept of natural variations'. I have not specifically mentioned about these natural variations in my report. It is wrong to suggest that my opinion is not definite, conclusive and complete. It is wrong to suggest that I not used the scientific instruments and for that reason I have not mentioned the name of the instruments in my opinion. It is wrong to suggest that I had not interse compared C1 to C8 and C9 to C20.

Q:- Have you mentioned about the interse comparison/examination of C1 to C8 and C9 to C20 in your opinion?

A:- I have interse examined of C1 to C8 and C9 to C20. Although, I have not specifically mentioned the word 'interse' in my report. It is wrong to suggest that in my opinion it is not mentioned that I had interse made comparison/examination of C1 to C8 and C9 to C20.”

113. In my opinion, considering the overall testimony of RW-10, it can safely be held that his report regarding the genuineness of the signatures of Late Sh. A. C. Ghosh on the Will dated 10.05.1996 (Ex.PW1/A) is more credible and reasoned as compared to the report of Sh. B. N. Shrivastva/PW-6. Thus, the opinion given in report of GEQD Shimla (Ex.DW9/1) to the effect that the signatures of Late Sh. A. C. Ghosh on Will dated 10.05.1996 (Ex.PW1/A) were not written by the same person who had written the signatures on admitted/ comparative documents is more acceptable than the counter opinion given in report Ex.PW6/1. However, still the report of a handwriting expert is a weak piece of evidence and can be used for limited purposes. Although, the report of GEQD, Shimla Ex.DW9/1 appears to be more credible than that of Sh. B. N. Shrivastava (Ex.PW6/1), still I do not deem it sufficient to give a finding that Will (Ex.PW1/A) is a forged document simply on the basis of report of GEQD, Shimla (Ex.DW9/1) as handwriting comparison is not a perfect science. I deem it appropriate to appreciate other evidence surrounding the execution of the Will (Ex.PW1/A) as well as the testimonies of the attesting witnesses examined before the Court before giving a finding whether the letter of administration can be issued qua the said Will

Appreciation of Evidence in respect of Will dated 10.05.1996 propounded by Amarnath Ghosh

PC NO.42177/16
PC No.42197/16
PC No.42195/16

*Amarnath Ghosh vs. State
Bimalendu Ghosh vs State
Bimalendu Ghosh vs State*

114. This Will has been propounded by Sh. Amarnath Ghosh, who is the petitioner in PC No. 42177/2016. The original Will has been placed on record and is exhibited as Ex.PW-1/A. The attesting witnesses to the Will Sh. Prashant K. Charkraborty & Sh. Ravi Mohan Anand have been examined as PW2 & PW3 respectively. The Will Ex.PW-1/A is a registered document and its registration has also been duly proved by summoning the record from the Office of Sub-Registrar-VIII, through examination of PW-5.

115. Much has been argued regarding the suspicious circumstances surrounding the execution of Will dated 10.05.1996 (Ex.PW1/A). The primary argument of Ld. Counsels for Bimalendu Ghosh and sisters of the parties is that the alleged Will dated 10.05.1996 has been registered only on 03.08.2000 i.e. after more than four years of alleged execution of the Will and more than three and a half years of demise of the testator late Sh. A.C. Ghosh. It is submitted that although registration of a document gives weight to its authenticity however the manner in which Will dated 10.05.1996 (Ex.PW1/A) has been registered more than three and a half years after the demise of the testator adds to the suspicious circumstances surrounding the Will. Per contra, on behalf of Amarnath Ghosh, it is argued that the Registration Act does not mandate registration of a Will and a Will is acceptable even without its registration. Accordingly, registration of the Will (Ex.PW1/A) after demise of the testator does not in any manner makes it a doubtful document. It is explained that Sh. Amarnath Ghosh was required to get the Will (Ex.PW1/A) registered after

demise of the testator as the concerned authorities required registered Will for the purposes of mutation of the property in his favour. In addition to this, registration of Will (Ex.PW1/A) duly authenticates the same as the witnesses to the Will who had got the Will registered had duly appeared before the Sub-Registrar and gave their statement of execution of the Will by the testator. Accordingly, mere registration of Will (Ex.PW1/A) at a later date does not in any manner creates a doubt regarding its genuineness.

116. I have heard the submissions made in this regard and carefully perused the record. Under Section 18 (e) of Registration Act 1908, Wills are the documents of which registration is optional and not mandatory. Thus, mere non-registration of a Will does not make it a doubtful document. Section 27 of Registration Act, 1908 provides that a Will may be presented for registration at any time. Under Sections 40 & 41 of Registration Act 1908, the executor or a beneficiary can present the Will for registration by producing the original document, the testator's death certificate and witnesses before the Sub-Registrar. Accordingly, Registration Act, 1908 recognizes registration of a Will after demise of the testator. Perusal of the Will (Ex.PW1/A) clearly shows that there is a noting of the Sub-Registrar on the back side of the Will "after demise of the testator". Accordingly, the Will (Ex.PW1/A) has not been registered in a clandestine manner without following the proper procedure provided for registration of a Will after demise of the testator. There is no requirement of law that at the time of registration of the Will after demise of testator,

notice has to be given to all his legal heirs. In these circumstances, mere registration of the Will (Ex. PW1/A) after about three and a half years of demise of the testator cannot be held to be a suspicious circumstance surrounding the Will. On the contrary, it is also true that mere registration of the Will is not sufficient to hold that it has been duly executed by the testator as required by law in sound disposing mind out of its own free Will as last and valid testament. Before giving a finding to this effect, the due execution of the Will as required under Section 63 Indian Succession Act and Section 68 of Indian Evidence Act has to be proved.

117. Let us now examine the testimony of witnesses examined and evidence led by Sh. Amarnath Ghosh in order to prove the Will (Ex. PW1/A).

118. As per the Will (Ex.PW1/A), the testator Sh. A.C. Ghosh was aged about 83 years at the time of execution of the said Will. The Will (Ex. PW1/A) is typewritten on a stamp paper purchased from a stamp vendor at Aruna Asaf Ali Road although the testator was a resident of Chitranjan Park, New Delhi. The witnesses to the Will that are PW-2 Dr. Prashant K. Chakraborty & PW-3 Sh. Ravi Mohan Anand are school friend and college friend respectively of Sh. Amarnath Ghosh the beneficiary named in the Will (Ex.PW1/A). As per their testimonies, the Will was already typed and prepared when they reached the house of the testator as called by him. PW-3 Ravi Mohan Anand had categorically testified that the contents of the Will were not read over to any of them and he was not aware about the

contents of that Will. However, in the same breath he also stated that when he met Sh. Amarnath Ghosh he told him that he had gone to his house in his absence and signed as an attesting witness on the Will of his father. PW-2, on the other hand, stated that he never talked about the contents of the Will to any of the relatives of the testator even after the demise of the testator though he was on visiting terms with all the family members. PW-3 also testified that he knew other witness to the Will i.e. PW-2 only through Sh. Amarnath Ghosh. No evidence has been led by Sh. Amarnath Ghosh to clarify or explain as to how the stamp paper was procured by late Sh. A. C. Ghosh who was a super senior citizen against about 83 years age.

119. Sh. Amarnath Ghosh has examined himself as PW1 and has testified in his cross examination that he was not aware who had purchase the stamp paper for execution of the Will and his father Sh. A.C. Ghosh was 84 years old at the time of execution of the Will and was not much moving around. In view of these statements of PW1 Sh. Amarnath Ghosh, the evidence regarding procurement of stamp papers for preparation of Will (Ex.PW1/A) as well as typing of Will (Ex.PW1/A) becomes very relevant. However, no evidence in this regard has been led by Sh. Amarnath Ghosh. Perusal of Will (Ex.PW1/A) shows that the same is a typed document however, there is no mention of the scribe or the person who had prepared the said type written document. Both the witnesses to the Will (Ex.PW1/A) i.e. PW2 and PW3 have shown ignorance in this regard and have simply deposed that the Will was already typed and prepared when they reached the house of the testator. It is interesting to note that PW-1/ Sh.Amarnath

Ghosh has categorically deposed in paragraph no. 10 of his evidence affidavit Ex.PW1/A that his father informed him that he had executed a Will in respect of his property in his favour and had also handed over the original Will dated 10.05.1996 to him a few days prior to 01.06.1996. Accordingly, as per the deposition of Amarnath Ghosh he was well aware about the execution and was in possession of the Will (Ex.PW1/A) since May 1996 itself. Sh. A.C. Ghosh expired on 16.12.1996 but Sh. Amarnath Ghosh did not make any inquiry from his father as regards the manner in which he had procured the stamp paper from the office of stamp vendor at Asaf Ali Road and got the Will typed. Since Amarnath Ghosh is the propounder of the Will it was his duty to dispel the clouds of doubt/suspicion surrounding the Will. The mere admission of Sh. Amarnath Ghosh that his father Sh. A.C. Ghosh was “not much moving around” at the time of preparation and alleged execution of the Will (Ex.PW1/A) coupled with the fact that there is no evidence regarding the procurement of stamp paper and typing of the Will and the witnesses to the Will are childhood friends of Sh. Amarnath Ghosh (i.e. the beneficiary named in the Will) are sufficient to doubt the due execution of the Will dated 10.05.1996 by the testator Late. Sh. A.C. Ghosh.

120. Another doubt/suspicion surrounding the due execution of the Will (Ex.PW1/A) is that the testator Sh. A. C. Ghosh called friends of Sh. Amarnath Ghosh one of whom was not even his neighbours to witness the execution of the Will by him and not his own family or friends or neighbours. It is an admitted fact that Sh A. C. Ghosh was residing at

Chitranjan Park since long. Thus, he must be having good relations with several persons living in the neighbourhood. One such person Sh. P. K. Ghosh who was a family friend, relative and neighbour of Sh. A. C. Ghosh is examined as PW-4. Despite availability of several known and reliable persons in the locality why PW-2 and PW-3 who were friends of Sh. Amarnath Ghosh were called is an unanswered question sufficient to surround the execution of the Will (Ex.PW1/A) with suspicious circumstances. This is more so as PW-3 was not even a neighbour of Sh. A. C. Ghosh but a resident of Vivek Vihar, East Delhi which is quite far off from Chitranjan Park where testator was residing. The closeness of witnesses to the Will with Sh. Amarnath Ghosh i.e. the propounder of the Will (Ex.PW1/A) who received substantial benefit under the Will raise suspicion about due execution of the Will. The onus was upon the propounder Sh. Amarnath Ghosh to remove this legitimate suspicion which he has failed to do.

121. Sh. Bimalendu Ghosh has put forth a case that the Will (Ex.PW1/A) was fabricated by Sh. Amarnath Ghosh in connivance with the attesting witnesses who were his friends. Although suggestions to this effect given to PW1, PW2 and PW3 have been denied by these witnesses but lack of evidence regarding procurement of the stamp papers and preparation and typing of the Will thereon coupled with the fact that the witnesses to the Will were friends of Sh. Amarnath Ghosh gives probability to the case put forth by Sh. Bimalendu Ghosh when weighed on the scale of preponderance of probabilities. This probability is also a suspicious

circumstance surrounding due execution of Will (Ex.PW1/A) and Sh. Amarnath Ghosh has failed to remove such legitimate suspicion.

122. It is also worthwhile to mention that Will (Ex.PW1/A) on page 3 mentions *“my son Amarnath Ghosh Dastidar, after death of his parents, can get the property substituted/mutated in his own name in the records of the concerned authority on the basis of this Will or **its certified true copy**”*. This sentence shows intention of the maker of the document at the time of its preparation to get the Will registered as certified copy of only registered documents can be obtained. Admittedly, the Will (Ex.PW1/A) was not registered by the testator during his lifetime. Even Sh. Amarnath Ghosh did not get the Will registered during the lifetime of the testator although as per his own case he came in knowledge of the Will in May 1996 itself. However, this document was got registered by Sh. Amarnath Ghosh in the year 2000 after demise of the testator. This again raises a doubt regarding due execution of the Will (Ex.PW1/A) during his lifetime as, if the testator Sh. A. C. Ghosh said himself got the Will executed with the intention of getting it registered, he had ample time and opportunity to do so during his lifetime, if not by his own, with the assistance of Sh. Amarnath Ghosh who was informed about the execution of the Will (Ex.PW1/A) in the month of May 1996 itself. Sh. Amarnath Ghosh has not come forward with any explanation for non-registration of the Will during the lifetime of Sh. A. C. Ghosh.

123. Perusal of Will (Ex.PW1/A) also shows that although the same has been typed at the same time but the date “10th” and the month “MAY” typed on the last page of the Will are clearly typed at a different time as the ink and pressure of typing is different in these two details when compared to the entire typing in the Will. No explanation has been put forth by Sh. Amarnath Ghosh to explain this discrepancy in the Will (Ex.PW1/A). During the course of arguments it has been argued on behalf of Sh. Amarnath Ghosh that there is a possibility that Will was typed on a different date and when the witnesses were arranged the date on the Will was typed later on. This explanation does not inspire the confidence of the Court as Sh. Amarnath Ghosh has not come forward with a case that Sh. A.C. Ghosh was having a typewriter and had typed the Will and dates on his own. An 83 year old person admittedly having limited mobility can not be expected to go to the scribe/typist on two different occasions for getting contents of the Will and date typed. Although, there is a possibility that at the time of typing of the contents of the Will, the date was not got typed but in such a circumstance, the date would have been put by hand at the time of signing of the Will in place of rushing to the typist. This again, brings forth a suspicious circumstance surrounding the execution of Will Ex.PW1/A which suspicion has not been duly explained or removed by the propounder of the Will Sh. Amarnath Ghosh.

124. It is further interesting to note that Sh. Amarnath Ghosh has admitted being in possession of the Will (Ex.PW1/A) since May 1996. However, as per his own admissions during the cross examination, he did

not disclose about the Will to his siblings or his mother despite their admitted presence at the time of performance of last rites of his father. He even admitted that he had not disclosed about the Will (Ex.PW1/A) to his siblings or mother during the lifetime of his mother Smt. Usha Ghosh who expired on 27.05.1998. He tried to explain his conduct in this regard by volunteering that he had not disclosed about the Will to anyone as there was a clause in the Will and his father had also orally told him not to disclose about the Will to anybody till the demise of his mother. Perusal of Will (Ex.PW1/A) clearly show that there is no such clause in the Will about non disclosure of the Will during lifetime of Smt. Usha Ghosh. Regarding the oral instructions of testator as volunteered by PW1 Sh. Amarnath Ghosh during his cross examination, there are no pleadings to this effect on record. Accordingly, this explanation given by Sh. Amarnath Ghosh/PW1 does not inspire the confidence of the Court. It is also noteworthy that Sh. Amarnath Ghosh/PW1 testified in his cross examination that he neither disclosed about the Will (Ex.PW1/A) to his siblings on death or Tehrvi of his mother nor supplied them with a copy of the Will. Admittedly the Will was disclosed to his siblings by Sh. Amarnath Ghosh only in the year 2000. No reason or explanation has been given by Sh. Amarnath Ghosh either in his pleadings or in his testimony for non disclosure about the existence of the Will (Ex.PW1/A) even after demise of his mother. This conduct of Sh. Amarnath Ghosh in concealing the existence of the Will (Ex.PW1/A) from his siblings is highly suspicious and clouds the very existence of the Will since May 1996 itself with doubt. This is another suspicious circumstance surrounding the due execution of

the Will (Ex.PW1/A) which has not been explained or removed by the propounder of the Will Sh. Amarnath Ghosh.

125. Relying upon two previous documents allegedly executed by Sh. A.C. Ghosh that are Deed of Dedication (Ex.PW1/F) and a letter written EPDP Association (Ex.PW1/C), it is argued on behalf of Sh. Amarnath Ghosh that the intention of Sh. A.C. Ghosh concerning the property in question was absolutely clear since beginning that he wanted his son Sh. Amarnath Ghosh to have the rights in the said property. It is submitted that Deed of Dedication dated 07.08.1987 has been duly proved by the concerned notary public who has been examined as PW7 and the same categorically mentions that Sh. A.C. Ghosh had authorized Sh. Amarnath Ghosh to make construction of first floor of the property in question with separate water and electricity connections and tax assessments in his own name as the owner of the first floor. Accordingly Sh. A.C. Ghosh had dedicated his rights of construction/ownership on the first floor of the property in question voluntarily in favour of Sh. Amarnath Ghosh. It is further submitted that letter dated 24.02.1992 written by Sh. A.C. Ghosh to EPDP Association which is proved as Ex.PW1/C is regarding a request to transfer his life membership in the association in the name of his son Sh. Amarnath Ghosh. It is submitted that this letter also clearly indicates the intention of Late Sh. A.C. Ghosh to give rights in the property in question (allotted by EPDP Association) in favour of Sh. Amarnath Ghosh. Relying upon these documents it is submitted that the execution of Will (Ex.PW1/A) is a natural consequence of the intention of Late Sh. A.C.

Ghosh regarding use/ownership of the property in question by his son Sh. Amarnath Ghosh.

126. I have heard the submissions made in this regard and carefully perused these two documents. Even if these documents are presumed to be duly executed by Late Sh. A.C. Ghosh, they are not in any manner reflective of the intention of Sh. A.C. Ghosh to bequeath the entire property in question in favour of Sh. Amarnath Ghosh. The deed of dedication (Ex.PW1/F) merely reflects intention of Sh. A.C. Ghosh to give a right to Sh. Amarnath Ghosh to make construction over the first floor of the property in question and own and possess the same as owner thereof. This Deed of Dedication in no manner shows that Late Sh. A.C. Ghosh wanted Sh. Amarnath Ghosh to have ownership rights over the entire property in question. Rather the deed of dedication (Ex.PW1/F) categorically contains a clause that Sh. Amarnath Ghosh shall neither dispose of the property at first floor nor put it on mortgage or give it on lease exceeding 3 years or enter into any higher purchase agreement without the written consent of his elder brother Sh. Bimalendu Ghosh. This clause clearly reflects that Sh. A.C. Ghosh intended both his sons to have rights in the property in question. This Deed of Dedication 07.08.1987 (Ex.PW1/F) is more akin in its terms and conditions to the Will of Sh. A.C. Ghosh dated 07.08.1986 (Ex.RW2/2) propounded by Sh. Bimalendu Ghosh as the said Will also gives similar right of construction and ownership over the first floor of the property in question to Sh. Amarnath Ghosh. Accordingly, this Deed of Dedication (Ex.PW1/F) is of no support

to the case of Sh. Amarnath Ghosh and does not give any authenticity to the Will (Ex. PW1/A) propounded by him.

127. The second document is a letter dated 24.02.1992 (Ex.PW1/C) allegedly written by Sh. A.C. Ghosh to EPDP Association regarding transfer of his life membership in the name of his son Sh. Amarnath Ghosh. Again, this letter in no manner reflects the intention of Sh. A.C. Ghosh to transfer the entire property in question in the name of his son Sh. Amarnath Ghosh. The letter only pertains to transfer of some life membership in the name of Sh. Amarnath Ghosh. It is neither the case of Sh. Amarnath Ghosh nor any evidence has been produced by him to the effect that by transferring the life membership of Sh. A.C. Ghosh in the name of his son Sh. Amarnath Ghosh, he was transferring the entire property in question in favour of Sh. Amarnath Ghosh. Admittedly elder brother of Sh. Amarnath Ghosh namely Sh. Bimalendu Ghosh was residing outside India during the relevant period and Sh. Amarnath Ghosh was residing with his parents at that time. Accordingly, it was only natural for Sh. A.C. Ghosh to transfer his life membership in the name of Sh. Amarnath Ghosh for practical reasons. In view of the reasons given above, letter (Ex.PW1/C) is of no use to the case of Plaintiff and it does not reflect towards genuineness of the Will added (Ex.PW1/A) propounded by him.

128. Sh. Amarnath Ghosh has also placed reliance on the testimony of PW-4/Sh. P. K. Ghosh during the course of arguments and stated that PW-4 who was the family friend and relative of Late Sh. A. C. Ghosh has

categorically deposed that Sh. A. C. Ghosh had informed him about execution of Will in favour of his younger son since he was looking after him during his old age and he was not pleased with the conduct of his elder son. It is submitted that the testimony of this witness also points towards the genuineness of the Will (Ex.PW1/A) propounded by Sh. Amarnath Ghosh. This argument of Sh. Amarnath Ghosh does not inspire the confidence of the Court as before relying upon a Will for granting probate/letter of administration, the Will has to be proved as required under Section 68 of Indian Succession Act. A mere deposition by a third person that the testator had informed him about the execution of the Will at some subsequent occasion is not a sufficient proof of due execution of the Will and do not give authenticity to the Will especially when the witnesses to the Will do not appear to be genuine and reliable. Admittedly, Sh. P. K. Ghosh/PW-4 was more than 20 years younger to Late Sh. A. C. Ghosh. As per the testimony of PW-4, he used to meet Sh. A. C. Ghosh only twice or thrice in a month and accordingly, it is difficult to assume that Late Sh. A. C. Ghosh used to discuss his personal family matters with him. Even otherwise, if the entire testimony of PW-4 is taken to be the gospel truth, the same cannot replace the evidence of the witnesses to the Will and is not sufficient to give a finding regarding genuineness of the Will (Ex.PW1/A).

129. On the other hand, Sh. Bimalendu Ghosh has relied upon various letters allegedly written by Sh. A.C. Ghosh to him complaining about the conduct and behavior of Sh. Amarnath Ghosh. Relying on these letters, it is argued that since Sh. A. C. Ghosh was not happy with conduct of Sh.

Amarnath Ghosh, he had no reason to execute the Will dated 10.05.1996 (Ex.PW1/A) in his favour. These letter are ranging from the year 1981 to 1991 and are Ex.RW2/1A to Ex.RW2/1L. All these letters are in Bengali Language. Although the English translations of these letter have been placed on record but they are neither translations made by any authorized translator nor duly proved on record or admitted by the opposite party. Accordingly, the alleged contents of these letters cannot be looked into in support of case of any of the parties.

130. In view of the detailed reasons given above and considering the evidence led by the parties, I have no hesitation in holding that the execution of the Will (Ex.PW1/A) is surrounded by various suspicious circumstances detailed above. Neither the witnesses to the Will (Ex.PW1/A) are reliable (being close friends of Sh. Amarnath Ghosh) nor the procurement of stamp paper and typing and preparation of the Will has been proved. Non-registration of Will by testator despite his evident wish to do so as well as non-explanation of typing of date and place at different times when compared to body of the Will, clouds the due execution of the Will with doubt. Moreover, non-disclosure of Will to his siblings by Sh. Amarnath Ghosh for a long time is another suspicious circumstance surrounding the Will. The propounder of the Will Sh. Amarnath Ghosh has failed to dispel these suspicious circumstances surrounding the due execution of the Will (Ex.PW1/A). The evidence led by the propounder Sh. Amarnath Ghosh is not sufficient to satisfy the conscience of the Court that the Will (Ex.PW1/A) was duly executed by the testator Sh. A. C.

Ghosh. Sh. Amarnath Ghosh has failed to offer cogent and convincing explanations to the suspicious and abnormal circumstances surrounding the making of the Will (Ex.PW1/A) as detailed above. Accordingly, it can not be held that the Will Ex.PW1/A was duly executed by the testator Sh. A.C. Ghosh out of his free volition without any coercion or undue influence. Thus, the Will (Ex.PW1/A) cannot be accepted as a genuine last and final testament of Late Sh. A.C. Ghosh.

Appreciation of Evidence in respect of Will dated 07.08.1986 and Codicil dated 31.12.1989 propounded by Bimalendu Ghosh

131. Sh. Bimalendu Ghosh, petitioner in PC no. 42197/2017 titled as “*Bimalendu Ghosh Vs. State*” has propounded Will dated 07.08.1986 and Codicil 31.12.1989 as the last and valid testament of Late Sh. A.C. Ghosh. The original Will dated 07.08.1986 and original Codicil dated 31.12.1989 are filed on record and are Ex.RW2/2 and Ex.RW2/3 respectively. Both these documents are witnessed by two witnesses namely Sh. B.P. Ganguly and Sh. J. Bhattacharjee. Out of these two witnesses Sh. J. Bhattacharjee has been examined by Sh. Bimalendu Ghosh as RW7.

132. RW7 is a summoned witness who deposed about execution of Will (Ex.RW2/2) and Codicil (Ex.RW2/3) by Sh. A.C. Ghosh in his presence as well as in the presence of the other witness Sh. B.P. Ganguly. He categorically deposed that the testator had signed the Will and Codicil in his presence and he and the other witness Sh. B.P. Ganguly also signed the Will in the presence of testator Sh. A.C. Ghosh. In his examination in

chief, RW7 did not disclose about his relation with Sh. A.C. Ghosh or if Sh. A.C. Ghosh was in a fit state of mind at the time of execution of the Will and the Codicil. However, in his cross examination he testified that he knew Sh. A.C. Ghosh since 1978 as Sh. A.C. Ghosh and his father were colleagues residing in the same area. He also explained that he had met the other witness Sh. B.P. Ganguly on the same day when he had witnessed execution of Will (Ex.RW2/2) at the house of the testator Sh. A.C. Ghosh. He also clarified that his father had informed him that Sh. A.C. Ghosh wanted to execute a Will and checked with him if he could become a witness to the same. Nothing contrary to these facts has come on record in the detailed cross-examination of RW7. RW7 was also not given any suggestion to the effect that the testator Sh. A.C. Ghosh was not in a sound disposing mind at the time of execution of the Will and the Codicil.

133. It is argued on behalf of Sh. Amarnath Ghosh that RW7 is not a reliable witness as he could not tell the names of family members of Sh. A.C. Ghosh or the date of his death. Admittedly, he was not a frequent visitor to the house of Sh. A.C. Ghosh and had not even attended the last rites of Late Sh. A.C. Ghosh. RW7 was also not able to tell that after execution of the Will who had kept the same, whether it was kept in a sealed cover or if three copies of the Will (Ex.RW2/2) were prepared and signed at the relevant time. It is submitted that as per the case of Sh. Bimalendu Ghosh three copies of the Will (Ex.RW2/2) and Codicil (Ex.RW2/3) with original signatures of Sh. A.C. Ghosh as well witnesses were prepared (as admitted by RW2 in his cross examination recorded on

25.08.2011). It is also the case of Sh. Bimalendu Ghosh that three copies of the two documents were kept in three different envelopes which were later on opened by RW6 in the presence of all the children of Late Sh. A.C. Ghosh on 06.12.1997. Certificate in this regard has been relied upon by Sh. Bimalendu Ghosh as well as proved by Ms. M. Jayasree/RW6 as Ex.RW2/4. However, only one copy each of the Will and codicil have been placed on record. Sh. Bimalendu Ghosh has miserably failed to explain as to what happened to the other two originally signed copies of Will and Codicil. Even the witness to the Will/RW7 has not deposed to the effect that three copies of Will and Codicil were executed by the testator Sh. Amarnath Ghosh on the respective dates and all the three copies were duly attested by him and Sh. B.P. Ganguly as witnesses. It is submitted that this contradiction reflects a major suspicious circumstance surrounding the due execution of the Will (Ex.RW2/2) and Codicil (Ex.RW2/3). Sh. Bimalendu Ghosh has miserably failed to explain or clarify this discrepancy.

134. I have heard the submissions made in this regard and carefully perused the record. The witness to Will (Ex.RW2/2) and Codicil (Ex.RW2/3), Sh. J. Bhattacharjee/RW7 has identified his signatures as well as those of the testator and the other witness Sh. B.P. Ganguly on these two documents which are a part of the Court record. He was never suggested nor questioned if three original Wills and Codicils were got executed at the relevant time. There is no denial by RW7 regarding signing of three copies of the Will in original as deposed by Sh. Bimalendu

Ghosh/RW2. In the absence of any specific denial by RW7 in this regard, his non deposition on the aspect of original signing of three copies of the Will does not create any suspicion regarding due execution of the Will. RW7 is a summoned witness who was only shown Will (Ex.RW2/2) and Codicil (Ex.RW2/3) and accordingly, his testimony is limited to these two documents. He was never asked either in his examination in chief or during his cross examination about execution of total three copies of Will and Codicil. Accordingly, he was not required to make any statement in this regard. As regards the argument of Amarnath Ghosh that RW7 has failed to show that he was known to A.C. Ghosh as he has not participated in his last rites and was not able to tell the details of family member of Late Sh. A.C. Ghosh, I do not find any merit in this argument as RW7 has categorically testified that his father was a colleague of Late Sh. AC Ghosh and he had agreed to become a witness to the execution of the Will as Late Sh. A.C. Ghosh had made a request in this regard to his father. RW7 has also clarified that he resided in the same area as Late Sh. A.C. Ghosh and used to meet him very often outside his house during evening walks. In these circumstances, inability of RW7 to give the names of all the family members of Late Sh. AC Ghosh and his admission regarding non attending of last rites of Late Sh. AC Ghosh do not make RW7 a doubtful witness but only points towards him being a natural witness.

135. Considering the overall evidence that has come on record regarding execution Will (Ex.RW2/2) and Codicil (Ex.RW2/3), I have no hesitation in holding that the propounder of these two documents Bimalendu Ghosh

has duly proved on record due execution of the Will and Codicil by Late Sh. A. C. Ghosh in sound disposing mind. No real, germane or valid suspicious circumstance has come on record to excite the suspicion of the Court regarding the due execution of Will (Ex.RW2/2) and Codicil (Ex.RW2/3). The subsequent Will dated 10.05.1996 (Ex. PW1/A) propounded by Sh. Amarnath Ghosh has not been duly proved by him as discussed above. Accordingly, Will (Ex.RW2/2) and Codicil (Ex.RW2/3) are held to be last and final testament duly executed by testator Late Sh. A. C. Ghosh in sound disposing mind.

Appreciation of Evidence in respect of Will dated 12.01.1998 of Smt. Usha Ghosh propounded by Bimalendu Ghosh

136. Bimalendu Ghosh, petitioner in PC no. 42195/2016 titled as Bimalendu Ghosh Vs. State has propounded Will dated 12.01.1998 as the last and valid testament of Late Smt. Usha Ghosh. The original Will dated 12.01.1998 is filed on record and is Ex.RW1/1. This will is witnessed by two witnesses namely Sh. B.P. Ganguly and Sh. N. C. Chatterjee. Out of these two witnesses Sh. N. C. Chatterjee has been examined by Sh. Bimalendu Ghosh as RW1. In addition to this, Ms. M. Jayasree, the advocate who had prepared the Will (Ex.RW1/1) on instructions of Smt. Usha Ghosh has also been examined as RW5.

137. RW1, witness to the Will (Ex.RW1/1) deposed about the execution of the Will by Smt. Usha Ghosh on 12.01.1998 in his presence and also in the presence the other witness Sh. B.P. Ganguly before the office of Sub

Registrar, Vikas Sadan, INA. He identified his signatures on the Will Ex.RW1/1 and stated that Smt. Usha Ghosh signed the Will in his presence. He testified in his cross examination that he knew the testatrix Smt. Usha Ghosh as her son-in-law was brother of his daughter-in-law. Sh. B. P. Ganguly, Smt. Usha Ghosh and her daughters had accompanied him to the office of Sub Registrar on the date of execution of the same. A lawyer was also present there who had read over the Will to them before execution. He also testified that Smt. Usha Ghosh had told him that she was aware about her share in the property which she was bequeathing. He also testified that testatrix appeared to be physically and mentally fit at the time of execution of the Will. Nothing material has come in the cross examination of RW1 to doubt his presence as a witness at the time of execution of the Will (Ex.RW1/1).

138. RW6 Ms. M. Jayasree is a summoned witness who deposed the Will Ex.RW1/1 was prepared by her on instructions of Smt. Usha Ghosh. In her cross examination she testified that she was instructed by one of the daughters of Smt. Usha Ghosh to prepare her Will by visiting her house. She had visited the house of Smt. Usha Ghosh and prepared the Will on her instructions. She denied the suggestion that Smt. Usha Ghosh was not physically fit to visit the office of Sub Registrar for registration of the Will and explained that Smt. Usha Ghosh could not visit her office as the same was situated at second floor. She also admitted that the Will was not registered in her presence but she had sent her office staff namely Sh. A. Karim to the office of Sub-Registrar for registration of the Will. She

denied the suggestion regarding physical or mental incapacity of Smt. Usha Ghosh to give instructions regarding preparation of her Will. Nothing material has come in the cross examination of RW6 to doubt the due preparation of the Will (Ex.RW1/1) by her at the instance of the testatrix Smt. Usha Ghosh.

139. In addition to these two witnesses Sh. Bimlendu Ghosh also examined RW5 who is a summoned witness from the office of Sub Registrar and deposed about registration of Will (Ex.RW1/1). I have also perused the original Will (Ex.RW1/1) which is a duly registered document. No suspicious circumstance regarding due execution of the Will (Ex.RW1/1) has come on record in the testimonies of these three witnesses relevant to the preparation, execution and registration of Will (Ex.RW1/1).

140. The only objection raised by Sh. Amarnath Ghosh is that Smt. Usha Ghosh had no right, title or interest in the property in question which she could bequeath by virtue of Will (Ex.RW1/1). In the present petition, I am sitting as a Probate Court considering the question whether probate/letter of administration can be issued in respect of Will (Ex.RW1/1). It is a settled law that as a Probate Court, this court is not required to decide the issue of ownership of the property involved in the Will which is the domain of a Civil Court. The only question required to be answered in the probate case is whether the will in question is the last and final testament validly executed by the testator in sound disposing mind. Accordingly, this objection of Sh. Amarnath Ghosh is beyond the scope of this petition.

141. It is further submitted on behalf of Sh. Amarnath Ghosh that as per the testimonies of RW-1 and RW-6, daughters of Late Smt. Usha Ghosh had taken prominent part in the execution of the Will (Ex.RW1/1). Accordingly, Will (Ex.RW1/1) cannot be held to have been executed by Late Smt. Usha Ghosh out of her own will and volition. Again, this argument of Sh. Amarnath Ghosh does not inspire the confidence of the Court as the daughters of Late Smt. Usha Ghosh have not received any benefit under the Will (Ex.RW1/1). Accordingly, their involvement in preparation, execution and registration of the Will (Ex.RW1/1) does not point towards any suspicious circumstance regarding execution of Will (Ex.RW1/1). Admittedly, Smt. Usha Ghosh was aged about 77 years at the time of execution of the Will and thus, it was only natural that she took help of her daughters for the purpose of execution of her Will. No evidence has been produced on record nor there are any pleadings of Sh. Amarnath Ghosh that the daughters of Late Smt. Usha Ghosh had got the Will (Ex.RW1/1) executed in favour of Sh. Bimalendu Ghosh on account of some extraneous benefits. In these circumstance, mere help provided by daughters of Smt. Usha Ghosh to their mother for the purpose of preparation of Will (Ex.RW1/1) is not sufficient to surround the execution of the Will (Ex.RW1/1) with any reasonable doubt.

142. Considering the overall evidence that has come on record regarding execution Will (Ex.RW1/1) and the reasons given above, I have no hesitation in holding that the propounder of the Will Sh. Bimalendu Ghosh has duly proved on record due execution of the Will by Late Smt. Usha

Ghosh in sound disposing mind. No real, germane or valid suspicious circumstance has come on record to excite suspicion of the court regarding the due execution of Will (Ex.RW1/1). Accordingly, Will (Ex.RW1/1) is held to be the last and final testament duly executed by testatrix Smt. Usha Ghosh in sound disposing mind.

143. In view of aforesaid discussion, now let us proceed to give issue wise findings in all the three petitions.

ISSUES in PC NO. 42177/2016 titled as AMARNATH GHOSH DASTIDAR Vs. STATE & ORS.

Issue No.1: Whether Late Sh. Amulya Chandra Ghosh executed a valid and enforceable Will dated 10.05.1996 as claimed by the petitioner? OPP

Issue No.2: Whether the petitioner is entitled for grant of probate in respect of aforesaid Will? OPP

Issue No.3: Whether the petition is liable to be dismissed for the objections raised by the respondents? OPR

144. All the three above mentioned issues are being taken up together as they require same appreciation of facts and evidence. In view of my detailed discussion and findings under the heading “**Appreciation of evidence in respect of Will dated 10.05.1996 propounded by Sh. Amarnath Ghosh**”, it is held that Sh. Amarnath Ghosh has failed to prove on record that the Will dated 10.05.1996 is the last and final testament of Late Sh. A. C. Ghosh duly executed by him in sound disposing mind. The execution

of the Will dated 10.05.1996 (Ex.PW1/A) is surrounded with various suspicion circumstances and the propounder of the Will Sh. Amarnath Ghosh has failed to dispel the same. The evidence led by the propounder Sh. Amarnath Ghosh is not sufficient to satisfy the conscience of the Court that the Will (Ex.PW1/A) was duly executed by the testator Sh. A. C. Ghosh. Propounder of Will dated 10.05.1996 (Ex.PW1/A) has also failed to offer cogent and convincing explanations to the suspicious and abnormal circumstances surrounding the making of the Will. Accordingly, it cannot be held that the Will dated 10.05.1996 was duly executed by the testator Sh. A. C. Ghosh out of his free volition without any coercion or any undue influence. Thus, the Will dated 10.05.1996 (Ex.PW1/A) cannot be accepted as a genuine last and final testament of Late Sh. A. C. Ghosh. Accordingly, Sh. Amarnath Ghosh is not entitled for grant of probate in respect of Will dated 10.05.1996 (Ex.PW1/A).

145. In view of the reasons given above, these issues are decided against the petitioner Sh. Amarnath Ghosh and in favour of the respondents.

Relief:

146. In view of my issue wise findings given above, the present petition stands dismissed.

147. No order as to costs.

148. File be consigned to Record Room.

**ISSUES in PC NO. 42197/2016 titled as BIMALENDU GHOSH
DASTIDAR Vs. STATE ORS.**

ISSUE No.1: Whether the Will dated 07.08.1986 and codicil dated 31.12.1989 were validly executed by testator Sh. Amulya Chandra Ghosh in sound disposing mind and the same is his last Will and codicil and testament? OPP

149. In view of my detailed discussions, reasons and findings given under the heading “**Appreciation of evidence in respect of Will dated 07.08.1986 and Codicil dated 31.12.1989 propounded by Sh. Bimalendu Ghosh**”, it is held that the propounder of these two documents Sh. Bimalendu Ghosh has duly proved on record due execution of the Will and Codicil by Late Sh. A. C. Ghosh in sound disposing mind. No real germane or valid suspicious circumstances has come on record to excite the suspicion of the Court regarding the due execution of the Will dated 07.08.1986 (Ex.RW2/2) and Codicil dated 31.12.1989 (Ex.RW2/3). The subsequent Will dated 10.05.1996 (Ex.PW1/A) propounded by Sh. Amarnath Ghosh has not been duly proved by him. In Will dated 07.08.1986 (Ex.RW2/2), Sh. Bimalendu Ghosh has been appointed as the executor of the Will and Codicil dated 31.12.1989 (Ex.RW2/3) is a continuation of Will dated 07.08.1986 (Ex.RW2/2) wherein again Sh. Bimalendu Ghosh has been appointed as the executor. Thus, Sh. Bimalendu Ghosh is entitled to grant of probate with copy of Will dated 07.08.1986 (Ex.RW2/2) and Codicil dated 31.12.1989 (Ex.RW2/3) attached.

150. In view of the reasons given above, this issue is decided in favour of petitioner Sh. Bimalendu Ghosh and against the respondents.

Relief.

151. In view of my issue wise findings given above, it is held that petitioner Sh. Bimalendu Ghosh is entitled to grant of probate with copy of the Will dated 07.08.1986 (Ex.RW2/2) and Codicil dated 31.12.1989 (Ex.RW2/3) attached. The petitioner Sh. Bimalendu Ghosh shall file an inventory containing a full and true estimate of all the properties in possession within 06 months from the date of grant of Probate, or within such further time as this Court grants and shall exhibit in the Court an inventory containing a full and true estimate of all the properties in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said Court may appoint, exhibit an account of the estate, showing the assets which have come to their hands and the manner in which they have been applied or disposed of.

152. Before parting with the present matter, it is clarified here that this judgment cannot be put to any use unless formal probate alongwith Letter of Administration is issued on filing of Court fees and administration bond cum surety bond.

153. No order as to costs.

154. File be consigned to Record Room as per rules.

**ISSUES in PC NO. 42195/2016 titled as BIMALENDU GHOSH
DASTIDAR Vs. STATE ORS.**

ISSUE No.1. Whether the Will dated 12.01.1998 was validly executed by testatrix Smt. Usha Ghosh in sound disposing mind and the same is her last Will and testament? OPP

155. In view of my detailed discussions, reasons and findings given under the heading “**Appreciation of evidence in respect of Will dated 12.01.1998 of Smt. Usha Ghosh propounded by Sh. Bimalendu Ghosh**”, it is held that the propounder of the Will Sh. Bimalendu Ghosh has duly proved on record due execution of the Will by Late Smt. Usha Ghosh in sound disposing mind. No real germane or valid suspicious circumstances has come on record to excite the suspicion of the Court regarding the due execution of the Will dated 12.01.1998 (Ex.RW1/1). In Will dated 12.01.1998 (Ex.RW1/1), Sh. Bimalendu Ghosh has been appointed as the executor of the Will. Thus, Sh. Bimalendu Ghosh is entitled to grant of probate with copy of Will dated 12.01.1998 (Ex.RW1/1) attached.

156. In view of the reasons given above, this issue is decided in favour of petitioner Sh. Bimalendu Ghosh and against the respondents.

Relief.

157. In view of my issue wise findings given above, it is held that petitioner Sh. Bimalendu Ghosh is entitled to grant of Probate with copy of Will dated 12.01.1998 (Ex.RW1/1) attached. The petitioner Sh. Bimalendu

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Ghosh shall file an inventory containing a full and true estimate of all the properties in possession within 06 months from the date of grant of Probate, or within such further time as this Court grants and shall exhibit in the Court an inventory containing a full and true estimate of all the properties in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said Court may appoint, exhibit an account of the estate, showing the assets which have come to their hands and the manner in which they have been applied or disposed of.

158. Before parting with the present matter, it is clarified here that this judgment cannot be put to any use unless formal probate alongwith Letter of Administration is issued on filing of Court fees and administration bond cum surety bond.

159. No order as to costs.

160. File be consigned to Record Room as per rules.

**ANNOUNCED IN THE OPEN COURT
TODAY I.E. 28th FEBRUARY 2026**

**(SHIVALI SHARMA)
District Judge-06 (Central),
Tis Hazari Courts, Delhi**

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