

IN THE COURT OF DISTRICT JUDGE, PURBA BARDHAMAN

Present: Sri Bimal Kanti Bera (WB00681),
District Judge, Purba Bardhaman

O. S. (Will) No.2 of 2023
(CNR -WBBD01-000616-2023)

Subhash Chandra Majumdar Vs. Sulekha Sarkar

Order No.24, dated 07.08.2026.

The record is put up for passing order.

This is a probate proceeding.

The present plaintiff brought the Probate proceeding before the learned District Delegate, Purba Bardhaman. The proceeding became contentious. Then the plaintiff approached this Court. The defendant entered appearance and filed written statement. During pendency of the case, she left.

The plaintiff's case is that his mother Ashalata Majumdar died at her permanent place of residence at Chhotonilpur, P.S. Burdwan, in the district of Purba Bardhaman on 14.10.1990. Before her death, she executed and published her last Will and testament dated 12.08.1990. The defendant, the sister of the plaintiff, initiated a proceeding against the present plaintiff in the Hon'ble High Court at Calcutta. While searching for old documents, as per instruction of the learned Advocate engaged by him in the High Court, the plaintiff got the Will in a box. Before discovery of the said Will, the plaintiff had no knowledge about the same. The Will was drafted by Harimohan Mondal a Law Clerk. His mother was physically fit and mentally sound at the time of execution of the Will. The plaintiff being the executor has filed the suit for Probate of the Will.

The defendant contested the suit by filing written statement denying and disputing the material averments made in the plaint. Her specific defense is that the instrument propounded by the plaintiff is forged one. Before her death, his mother did not execute any Will. The purported signature of Ashalata Majumdar at the bottom of the first page and second page of the Will are forged. Ashalata Majumdar used to consult her father and brothers regarding her property. But the purported Will does not bear any sign of her discussion with her father or brothers before execution of the alleged Will. The defendant used to pay visit to her mother from her matrimonial home. She came to know from her mother

that the present plaintiff and his wife had been torturing her for the purpose of transferring the property in his favour. Being tortured, her mother committed suicide by setting her ablaze on 14.10.1990. Her mother loved her very much. There is no rhyme or reason to deprive her by execution of the Will.

The plaintiff examined two witnesses. The P.W.1 is the plaintiff himself. The defendant cross-examined him. Thereafter, the defendant did not turn up and did not cross-examine the P.W.2.

The plaintiff as the P.W.1 has reiterated the statements made in the plaint. He has stated in his evidence that his mother died on 14.10.1990. Ext.1 is the death certificate of Ashalata Majumdar. Before her death, she executed the Will on 12.08.1990. While searching for necessary documents for the purpose of the proceeding before the Hon'ble High Court, he discovered the Will in a box. He had no knowledge about the Will before he found it out.

As per law, the Probate proceeding is to be brought within three years from the date of cause of action and not from the date of death. As the P.W.1 has stated that in the last part of July, 2021, he found out the Will there is no delay in bringing the instant proceeding which was presented before the learned District Delegate on 20.09.2021 as it appears from the record of the learned District Delegate tagged with the present case record.

The learned Advocate for the defendant during cross-examination of the P.W.1, has not put any suggestion about discovery of the Will in the year 2021. In his cross-examination, the P.W.1 has reiterated that in the month of July, 2021 he discovered the Will.

The P.W.2 Patit Paban Bag is one of the attesting witnesses. He has deposed that on 12.08.1990 Ashalata Majumdar executed a Will. Harimohan Mondal a Law Clerk of Burdwan Court, drafted the Will in her house as per her instructions. The P.W.2, the scribe and another witness namely Manab Samaddar had been present when the Will was drafted. After the Will was drafted, Ashalata Majumdar went through the same and confirmed its correctness. Then she put her signature in presence of both the witnesses. As instructed by her, the P.W.2 and Manab Samaddar put their respective signatures on the Will. The Will has been marked Ext.6 and admitted in evidence. Thus, the P.W.2 has proved the Will regarding attestation and execution. Both the P.W.1 and P.W.2 have deposed that the testatrix had been physically fit and mentally sound at

the time of execution of the Will. There are no defence or evidence to the contrary.

The defendant though took the specific defense that the Will is forged one, no steps was taken by her to compare the disputed signature appearing on the Will with any admitted signature of her mother. The defendant preferred not to adduce any evidence. There are no suspicious circumstances surrounding execution of the Will.

In the result, the suit succeeds.

Hence, it is,-

-: O R D E R E D :-

that the suit be and the same is allowed ex parte.

Issue Probate with copy of the Will annexed without security to the plaintiff Subhash Chandra Majumdar on deposit of adequate Court fees.

Dictated & corrected by me

Sd/-

District Judge,
Purba Bardhaman

Sd/-

District Judge,
Purba Bardhaman