

OS (Will) Case No. 23 of 2017

Order No. 68
29.08.2025

Petitioners and Opposite Party file their respective hajiras.

Today, this case is fixed for making order in respect of petition u/s 151 of CPC filed by the petitioner.

Accordingly, the petition u/s 151 of CPC is taken up for making order.

Perused the petition u/s 151 of CPC, its written objection by and on behalf of OP and the affidavits. Considered.

By the instant petition, the petitioners have prayed for permission to allow Mala Rani Mondal to adduce evidence as PW2 to prove the Will on the ground that all attesting witnesses of the Will except OP and Durga Pada Gupta had previously died and in spite of all efforts, Durga Pada Gupta had not adduced evidence in this case as he was maternal uncle of OP. The petitioners have come to know that Durga Pada Gupta had died on 25.01.2025 and there is no other option for the petitioner to prove the Will except with the evidence of Maya Rani Mondal, being daughter of witness to the Will Ram Ranjan Roy, since deceased. It appears from written objection filed on behalf of the Opposite Party that Will is required to be proved in according with provisions of Section 69 of the Evidence Act. Merely saying that the signature of the attesting witness is of him may not be sufficient unless he produces the signature of the attesting witness on some admissible document and makes both the signature available for comparison by the court to find out whether the person acted as real witness or not.

It is claimed by the petitioners that all other attesting witnesses of the Will except Opposite Party had died. The petitioners intend to prove Will by the evidence of daughter of one of the attesting witnesses. There is no impediment in permitting the petitioners to prove the Will if the petitioners can prove the same by cogent evidence in accordance with law. Hence, the instant petition filed by the petitioners u/s 151 of CPC is hereby allowed on contest without cost. The petitioners are permitted to examine Maya Rani Mondal as PW2 to prove the Will in accordance with law.

To 28.10.2025 for evidence of PW2.

Dictated & Corrected by me.

Additional District Judge, 3rd Court,
Burdwan

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