

O. C. No. 33 of 2018

**Present: Shri Subhrajit Basu [J.O. Code: WB01238]
Judge, Bench-IV, City Civil Court, Calcutta**

**Order No. 57
18.06.2025**

The learned advocates for the petitioner and the opposite party/objector are present.

The matter is fixed today for passing order in respect of the application filed by the petitioner under Section 151 of the CPC dated 13.09.2024.

In connection with the instant application, the petitioner also filed a supplementary affidavit affirmed on 10.04.2025.

The opposite party/objector has filed written objection against the instant application.

This Court has perused the instant application of the petitioner along with the supplementary affidavit, the written objection of the opposite party/objector and other materials on record and has heard submissions of the learned advocates for the parties.

The application of the petitioner dated 13.09.2024 is now taken up for passing order.

The instant case arises out of an application filed by the petitioner under Section 276 of Indian Succession Act, 1925 for grant of probate of a Will dated 03.10.1983 executed by its testator, namely, Late Radhika Mohan Rishidas, son of Late Indra Mohan Rishidas, of 72/3, Baithakkhana Road, P.S. Amherst Street, Kolkata 700009, during his lifetime.

According to the petitioner, he is the grandson of the testator, i.e., Late Radhika Mohan Rishidas and also the sole appointed executor as well as legatee under the said Will dated 03.10.1983 which was later registered before the Sub-Registrar of Assurances, Calcutta on 21.02.1984.

It is the case of the petitioner that the original Will dated 03.10.1983, after its registration on 21.02.1984, is lying in the office of Registrar of Assurances, Kolkata at present.

By the instant application, the petitioner prays for an order for issuance of summons upon the Registrar of Assurances, Kolkata to produce the said original Will of the testator dated 03.10.1983.

The learned advocate for the petitioner submitted that the testator died in the year 1985 long after execution and registration of the Will and the original IG receipt, which was lying with the testator, could not be traced out after his death and as such, the petitioner has duly filed the certified copy of the Will dated 03.10.1983 before this Court which was in his possession. However, according to him, since the original Will shall be required in the this case which arises out of the application for grant of probate of the Will in question, the petitioner, by making the instant application, is seeking an order from this Court production of the said original Will from the office of the Registrar of Assurances, Kolkata where the original Will is lying at present.

On the other hand, the opposite party/objector, in his written objection, *inter alia*, contended that nothing is forthcoming from the materials on record to show that the original Will is lying at the office of the Registrar of Assurances, Kolkata and as such, the instant application is misconceived and not maintainable.

The learned advocate for the opposite party/objector submitted that in the general course of registration like any other instrument presented for registration, the Will in question, after the process of its registration was complete, ought to have been handed over to the person who presented it for execution and if the Will was deposited with the concerned Registrar, the petitioner, claiming himself to be the executor/legatee under the Will, has a right under the law to apply before the said Registrar to obtain the original Will and then produce it before the Court.

The learned advocate for the opposite party/objector, however, pointed out that in the present case, nothing is forthcoming from the averments of the petitioner as to whether the Will, after its registration, was returned to the person who presented it or whether the Will was deposited by the testator with the concerned Registrar. According to him, in absence of these necessary details in the instant application, the prayer of the petitioner cannot be allowed. The learned advocate further argued that the petitioner has an efficacious alternative remedy in obtaining the original Will by making an appropriate application before the concerned Registrar and without taking recourse to such remedy, the petitioner cannot simply seek a direction from this Court upon the Registrar of Assurances, Kolkata for production of the original Will in question.

At this stage, it would be fruitful to refer to Sections 40 and 41 under Part VIII and Sections 43 to 46 under Part IX of the Registration Act, 1908 (hereinafter referred to as “the Registration Act”) which primarily deal with the provisions relating to registration and deposit of wills and for proper understanding, the same are reproduced hereunder –

“Part VIII: OF PRESENTING WILLS AND AUTHORITIES TO ADOPT

40. Persons entitled to present wills and authorities to adopt. —

- (1) *The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.*
- (2) *The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.*

41. Registration of wills and authorities to adopt. —

- (1) *A will or an authority to adopt, presented for registration by the testator or donor may be registered in the same manner as any other document.*
- (2) *A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—*
 - (a) *that the will or authority was executed by the testator or donor, as the case may be;*
 - (b) *that the testator or donor is dead; and*
 - (c) *that the person presenting the will or authority is, under Section 40, entitled to present the same.*

Part IX: OF THE DEPOSIT OF WILLS

42. Deposit of wills. —

Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

43. Procedure on deposit of wills. —

- (1) *On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.*
- (2) *The Registrar shall then place and retain the sealed cover in his fireproof box.*

44. Withdrawal of sealed cover deposited under Section 42. —

If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorized agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. Proceedings on death of depositor. —

- (1) *If, on the death of a testator who has deposited a sealed cover under Section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.*
- (2) *When such copy has been made, the Registrar shall re-deposit the original will.*

46. Saving certain enactments and powers of Courts. —

- (1) *Nothing hereinbefore contained shall affect the provisions of Section 259 of the Indian Succession Act, 1865 (10 of 1865), or of Section 81 of the Probate and Administration Act, 1881 (5 of 1881), or the power of any Court by order to compel the production of any will.*
- (2) *When any such order is made, the Registrar shall, unless the will has been already copied under Section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid."*

In this regard, Section 61 of the Registration Act is also relevant for consideration and the same is reproduced hereunder –

61. Endorsements and certificate to be copied and document returned. —

- (1) *The endorsements and certificate referred to and mentioned in Sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in Section 21 shall be filed in Book No. 1.*
- (2) *The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in Section 52.*

It is, thus, evident from these provisions that under Section 61(2) of the Registration Act, the Will, like any other instrument presented for registration, is to be returned to its presenter or his nominated person, after completion of the process of registration. Under Section 42, it is, *inter alia*, provided that any testator may, either personally or by duly authorized agent, deposit with any Registrar his Will in a sealed cover.

From the aforesaid provisions, it is evident that once the Will is deposited in sealed over before the Registrar under Section 42, the same may be withdrawn either by the testator or his duly authorized agent under Section 44. However, after the death of the testator, under Section 45, there is no scope of withdrawal of the sealed cover containing the Will and the only remedy in that case is to get a copy of the original Will.

In this regard, it is pertinent to note here that Section 46(1) of the Registration Act specifically protects the power of the Court to issue an order compelling the production of any Will and Section 46(2) thereof provides that when any such order is made, the Registrar shall, unless the Will has been already been copied, cause the Will to be copied and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

As noted hereinabove, the instant proceeding arises out of an application filed by the petitioner for grant of probate of a Will dated 03.10.1983 executed by one Late Radhika Mohan Rishidas and according to the petitioner, he is the sole appointed executor as well as the legatee under the said Will and the original Will, after its registration on 21.02.1984, is presently lying in the office of Registrar of Assurances, Kolkata.

The petitioner has filed the instant case on the basis of a certified copy of the Will dated 03.10.1983 wherefrom it appears that the said Will dated 03.10.1983 was registered before the Sub-Registrar of Assurances, Calcutta on 21.02.1984, being No. 82 for the year 1984, Book No. III, Volume No. 10, Pages 128 to 134. By the instant application, the petitioner seeks production of

the said original Will dated 03.10.1983 as it shall be required in the present proceeding. The present case is at the stage of further evidence of the petitioner. Needless to mention that for a proper and just decision in the instant case, the original Will dated 03.10.1983 is required to be produced before this Court.

In such circumstances, this Court is of the view that the question of absence of averments in the instant application as to whether the Will was deposited in sealed cover or as to why the same was not returned to the testator after its registration is not relevant for consideration at this stage in view of the fact that the original Will is required to be produced in this proceeding to meet the ends of justice and for a just decision in this case.

In this regard, it is noted that this Court has ample power under the provisions of Section 46 of the Registration Act to compel production of the original Will and this Court is of the view that the opposite party/objector cannot under the law object to such production of the original Will before this Court as none of his objections against the Will in question is prejudiced in any manner by mere production of the original Will before the Court.

In such view of the matter, this Court has no hesitation to hold that the instant application dated 13.09.2024 is entitled to be allowed in the interest of justice and for a just and proper decision in the instant case.

Thus, the instant application of the petitioner dated 13.09.2024 is hereby allowed.

Accordingly, the Registrar of Assurances, Kolkata is hereby directed to produce before this Court the original Will dated 03.10.1983 executed by Radhika Mohan Rishidas, son of Late Indra Mohan Rishidas, of 72/3, Baithakkhana Road, P.S. Amherst Street, Kolkata 700009 which was registered before the Sub-Registrar of Assurances, Calcutta on 21.02.1984, being No. 82 for the year 1984, Book No. III, Volume No. 10, Pages 128 to 134, positively by the next date as hereinafter fixed.

The C.A.O., City Civil Court at Calcutta is hereby directed to communicate this Order to the Registrar of Assurances, Kolkata for information and due compliance.

Copy of this Order be sent of the C.A.O., City Civil Court at Calcutta for necessary action.

D.A. to comply at once.

To **16.07.2025** for production of the original Will dated 03.10.1983 and further order.

At my dictation

Judge

**Judge, Bench-IV
City Civil Court, Calcutta**