

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, 1ST COURT AT ALIPORE,
SOUTH 24-PARGANAS**

Original Suit No. 1 of 2022

Present: Sri Rajesh Chakraborty (JO Code : WB00764)

Additional District Judge, 1st Court, Alipore (South 24-Parganas)

In the matter of grant of Probate in respect of the Last Will and Testament of deceased Mili Ghosh, wife of Late Shyma Charan Ghosh of 216/1, Kasba road, P.O. & P.S. Kasba, Kol – 42.

SRI ASHOK KUMAR GHOSH,
Son of Late Prafulla Kumar Ghosh,
residing at 216/1, Kasba Road,
P.O. & P.S. Kasba,
Kolkata – 700 042.
...Plaintiff/Applicant

Versus

Smt. Shila Ghosh, w/o Nishit Baran Ghosh,
of 6B, Uma Charan Mitra Lane, Kol - 03

...Defendant

JUDGMENT

Date of delivery of judgment: 22.04.2026

This is a contentious testamentary proceeding arising out of an application filed by the Plaintiff for grant of probate in respect of the last Will and testament alleged to have been executed by deceased Mili Ghosh on 10th June, 2018. Upon objection by the Respondent, the proceeding assumed the character of a regular suit and issues were framed. Though the matter was initially contested, the Respondent subsequently failed to prosecute the defence and did not proceed with evidence. The Court is therefore required to decide the suit on the basis of pleadings, the evidence already adduced, and the legal burden resting upon the propounder of the Will.

The Plaintiff's pleaded case is that Mili Ghosh, widow of late Shyama Charan Ghosh, was a Hindu governed by the Dayabhaga School of Hindu Law and was permanently residing at 216/1, Kasba Road, Kolkata, within the jurisdiction of this Court. She died issueless on 14th July, 2018. Her husband had predeceased her on 30th April, 2017. During her lifetime she executed her last Will and testament on 10th June, 2018, duly attested by witnesses and notarized on the same date. Under the said Will the Plaintiff, who is her brother-in-law, was appointed executor and also made beneficiary. The Plaintiff accordingly seeks probate.

The Respondent, by filing caveat and objection, disputed the Will and raised pleas of coercion, undue influence and existence of another later testamentary instrument. However, after issues were framed, the Respondent did not complete the contest. The order-sheet shows repeated defaults and eventual cessation of participation. Even so, since the proceeding was contested at inception including the cross-examination of the PW1, the Court must examine whether the Plaintiff has independently discharged the burden of proving the Will in accordance with law.

Exhibit list

| Exhibit | Subject |
|----------------|--|
| 1 | Photocopy of Aadhaar Card of Ashok Kumar Nath |
| 2 | Original Will executed by Mili Ghosh. |
| 2 series | signatures of Mili Ghosh in the Will |
| 2 series | signature of the witness in the signature of Onkar Nath Ghosh |
| 3 | Photocopy of Aadhaar Card of PW-2 |
| 4 | original Death Certificate of Testatrix Mili Ghosh, |
| 5 | original Death Certificate of my elder brother Shyama Charan Ghosh |
| 6 | original Death Certificate of my mother Durgabala Ghosh |

Upon the rival pleadings, the following issues were framed:

1. Is the suit maintainable in its present form and in law?
2. Whether the suit is barred by limitation?
3. Whether the WILL dated 10-06-2018 propounded by the last WILL of deceased Mili Ghosh is genuine and legally valid?
4. Whether the said WILL was obtained by coercion and exerting undue influence as pleaded by the respondent?
5. Whether the document filed by the respondent is the Last WILL / Codicil of the testator?
6. Whether the plaintiff is entitled to the Probate and / or Letter of Administration as prayed for in this suit?
7. To what other reliefs the parties are entitled?

DETERMINATION WITH REASONS

The issue as to maintainability of the suit in its present form and in law is answered first. A proceeding for probate is maintainable where a person named as executor under a Will seeks formal recognition of his representative capacity. The plaint discloses that the Plaintiff is the executor named in the Will. The deceased had fixed abode and property within the territorial jurisdiction of this Court. The suit is therefore maintainable both in form and in law. No legal bar to institution has been established by the defendant.

The issue relating to limitation is next considered. A petition for probate stands on a special footing. Probate is the judicial recognition of a Will and of the executor's authority. Mere lapse of time does not extinguish the right to seek probate, though delay may invite scrutiny if suspicious circumstances are shown. In the present matter the Will is of 2018 and the proceeding was instituted thereafter within a reasonable period. No prejudice arising out of delay has been proved. The suit cannot be held barred by limitation.

The principal issue is whether the Will dated 10.06.2018 propounded as the last Will of deceased Mili Ghosh is genuine and legally valid.

The law requires strict proof of testamentary instruments. Section 63 of the Indian Succession Act, 1925 mandates that an unprivileged Will must be signed by the testatrix and attested by two or more witnesses. Section 68 of the Indian Evidence Act, 1872 requires that at least one attesting witness be examined to prove execution if such witness is available.

To satisfy this requirement, the Plaintiff examined PW-1, Ashok Kumar Nath, one of the attesting witnesses. PW-1 stated on oath that he knew Mili Ghosh; that she executed a Will; that he signed the Will as an attesting witness; that another witness was present at the time of execution; that Mili Ghosh signed the Will in their presence; and that she was physically and mentally fit at the time of execution. He identified the signatures of the testatrix and of the attesting witnesses on the Will. The Will was marked Exhibit 2 and the signatures were separately exhibited as Ext. 2 series.

This testimony is of considerable evidentiary value. PW-1 has spoken to the execution by the testatrix, the presence of attesting witnesses, and his own attestation. These are the foundational facts required for proving a Will. His statement regarding sound physical and mental condition of the testatrix addresses testamentary capacity. Nothing material appears in his evidence to create doubt.

The cross-examination conducted on behalf of the defendant was meagre and ineffective. The witness was only asked whether he knew the deceased since her marriage and whether he knew her age. Such questions do not impeach attestation, execution, or capacity. No suggestion was put that the signatures were forged, that the witness was absent at execution, or that the deceased lacked understanding. Thereafter the cross-examination was deferred and never completed. Consequently, the substantive evidence of PW-1 remains unshaken.

The Plaintiff himself entered the witness box as PW-2. He proved his identity and produced the original death certificates of the testatrix Mili Ghosh, of Shyama Charan Ghosh, and of Durgabala Ghosh, marked Exhibits 4, 5 and 6. These documents corroborate the pleaded family circumstances and establish the death of the testatrix, thereby making the Will operative. His evidence also supports the assertion that the deceased died issueless and that the family circle was limited.

The Court is mindful that where the propounder derives benefit under the Will, the evidence must be examined with caution. However, benefit to the propounder is not by itself a suspicious circumstance. Suspicion arises when the disposition is unnatural, signatures appear doubtful, the testator was infirm, the Will is concealed, or the beneficiary plays a dominant role under doubtful conditions. No such circumstance has been proved here.

The deceased was a widow and issueless. Her husband had already died. A bequest in favour of a close relation from the husband's family cannot be said to be unnatural or improbable. The Will having been attested and also notarized on the date of execution lends additional assurance, though notarization is not a statutory substitute for proof. The crucial proof still comes from PW-1, which has been satisfactorily furnished.

Accordingly, the Court holds that the Will dated 10.06.2018 has been duly proved, is genuine, and is legally valid.

The issue whether the said Will was obtained by coercion or undue influence, as pleaded by the Respondent, now falls for determination. Allegations of coercion, fraud or undue influence are serious allegations and the burden lies on the party asserting them. Mere pleading is no proof. The defendant neither entered the witness box nor examined any witness nor produced any documentary material to substantiate such plea. No circumstance suggestive of pressure, domination or manipulation has emerged from the evidence. On the contrary, the attesting witness stated that the testatrix was physically and mentally fit. Therefore, the plea of coercion and undue influence fails.

The issue whether any document filed by the Respondent constitutes the last Will or codicil of the testatrix must also fail. A later Will or codicil, if relied upon, has to be specifically proved by the person asserting it in the same manner as any Will. No witness was examined by the defendant, no execution was proved, and no legally admissible evidence was adduced to establish any subsequent testamentary document. Hence the Court cannot recognize any alleged later Will or codicil.

The issue whether the Plaintiff is entitled to probate and/or letters of administration is therefore answered in favour of the Plaintiff. Since the Plaintiff is the named executor, the proper relief is probate rather than letters of administration.

On an overall appreciation of pleadings and evidence, this Court finds that the Plaintiff has discharged the legal burden cast upon a propounder. The defendant, despite opportunity, failed to substantiate the objections. The Will stands proved in solemn form.

Accordingly, the suit succeeds on contest against the defendant.

Hence, it is

ORDERED

that probate of the last Will and testament dated 10th June, 2018 executed by the deceased Mili Ghosh be granted in favour of the Plaintiff Sri Ashok Kumar Ghosh, the named executor therein, subject to payment of requisite court fees and compliance with all other statutory formalities as required under the Indian Succession Act and the Rules of this Court.

There shall be no order as to costs.

Let the probate be issued accordingly after due compliance.

Decree be drawn up accordingly.

Note in the relevant register and CIS.

D/C by me

Additional District Judge
1st Court, Alipore

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