

High Court Form No. (J) 2

Heading Of Judgment In An Original Suit/Case

District :24 Parganas (South)

In the Court Of :Additional District Judge, Fast Track,
II Court, Sealdah,Present :Parna Bhattacharjee
J.O. Code :WB01015.Thursday, 14th day of May, 2026.**O. S. No.01/2023.****C. I. S. No.1/2023.****CNR No.WBSP07 000061 2023**

Sri Siddhartha Das.....Plaintiff/Applicant.

-Versus-

Sri Sukumar Das and 07 Others.
.....Defendants.This appeal coming on for final hearing on 06.05.2026..... in the
presence ofSri Subrata Patra.
.....Advocate for the Plaintiff

AND

Sri Soham Dutta, Sudeshna Mukherjee, Mrs. Priti Paul
.....Advocates for the Defendants-and having stood for consideration to this day, the Court delivered
the following judgment.**Brief Facts:-**

One Registered Will dated 06.07.2017 registered in book
free being no.00087 for year 2017 at Sealdah was executed by one
Badal Chandra Das, son of Late Muktalal Das residing at 1/H/11,

Rakhal Ghosh Lane, P.S. Beliaghata, Kolkata-85, District – South 24-Parganas. It is the last will and testament of the said Badal Chandra Das, the testator herein, who died on 16.06.2022 at the aforesaid address and at the time of death was governed by Hindu Law. The said Will was duly executed by the deceased and attested by the attesting witnesses. The property bequeathed through the Will has been made of undivided half share of land measuring about 14 Chittak 12 sq.ft. with structure having three rooms on the ground floor measuring 640 sq.ft. and one room on the first floor measuring 260 sq.ft at premises no.1/H/11, Rakhal Ghosh Lane, P.S. Belaighata, Kolkata-85, District – South 24-Parganas. The property is valued at Rs.5,00,000/- within the jurisdiction of this Court. Said Badal Chandra Das, since deceased and his wife were issueless. The wife of the said testator predeceased him on 24.06.14. Said Badal Chandra Das bequeathed his undivided half share in favour of his grand son, the plaintiff herein, as along with said Badal Chandra Das is elder brother Sambhunath Das, since deceased, on 20.10.2008 and his wife Gita Das expired on 22.01.08.

The mere relation of the deceased are:-

- 1) Sukumar Das;
- 2) Prabir Das;
- 3) Gopal Das;
- 4) Ajay Das;
- 5) Shankar Das;
- 6) Sukla Das;
- 7) Sabyasachi Das and
- 8) Sandhya Das.

No application has been made by anybody in any other court for obtaining probate of the said Will or for Letters of Administration of the said property.

The plaintiff prays for granting Probate in his favour.

The defendant nos.2 to 7 have contested this suit by filing Written Statements and have denied all the contentions of the plaintiff.

It is the constructive case of the defendants that originally one Sambhunath Das and Badal Chandra Das were joint Thika tenants in respect of the property situated at premises no.1/H/11, Rakhal Ghosh Lane, P.S. Beliaghata, Kolkata-85 and they possess and enjoyed the same along with their other family members. Badal Chandra Das was an old ailing person and the grand uncle of the plaintiff. The said Badal Chandra Das aged about 80 years more or less was absolutely bed ridden due to his old age and was unable to recognize the family members. The plaintiff's father being the defendant no.1 is not aware about any Will issued by his uncle, the testator in the name of his son and only to grab the suit schedule property wrongfully and forcibly took the signature of the said testator and somehow managed to registered the said Will with the concerned Registry Office. As such there is no question of any Probate in the name of the plaintiff. The defendant also stated that the description of the property is false. According to the contention of the said defendant, this suit is barred U/Sec.21 of West Bengal Thika Tenancy Acquisition and Regulation Act, 2001. Thus the defendants have prayed for dismissal of this suit.

Evidence on Record:-

In order to establish this case, the plaintiff Siddhartha Das has been examined himself as PW-1 and

Debjani Adhikary has deposed as PW-2 (Attesting Witness).

This apart, the following documents are marked as Exhibits, they are:-

1. Aadhar Card of the plaintiff as Exbt.-1.
2. Original Death Certificate of Badal Chandra Das as Exbt.-2.
3. Tax Bill of KMC as Exbt.-3.
4. Signature of PW-2 on the Will dated 06.07.2017
5. The Will dated 06.07.2017, bearing signature of the testator Badal Chandra Das as Exbt.- 5 Series and
6. The whole Will Exbt.-6.

On the other hand Shankar Nath Das has deposed as DW-1.

Argument:-

Heard Ld. Advocate on behalf of both sides.

Ld. Advocate on behalf of the plaintiff in course of argument has placed reliance upon the following decisions as reported in:-

1. **2026 (1) ICC (Cal) 693;**
2. **2025 (1) ICC (Cal) 992** and
3. **2024 (3) ICC (Cal) 657.**

Issues for Consideration:-

From the rival pleadings of both the sides, the following issues are framed for consideration and determination:-

- 1) Is the suit maintainable in its present form both in law and facts?
- 2) Does the applicant has any cause of action to file the present suit?
- 3) Is the Will in question on executed by Badal Chandra Das?
- 4) Is the applicant entitled to grant of Probate in terms of his prayer?
- 5) To what other relief/reliefs is the petitioner entitled to?

DECISION WITH REASONS:

Before delving regarding the merits of this suit, let us have a glance on the evidence as adduced by the witnesses of this case.

For sake of convenience issue no.1 is taken up for consideration.

Issue No.1:-

This suit is simpliciter a suit of civil nature.

From the four corners of the pleading it appears that this suit is for grant of Probate in respect of the Will executed by the testator appointing the plaintiff as beneficiary therein and the said contention is contested by the defendant. There is nothing adverse on record regarding issue of maintainability.

Considering all the aspects, I find that the present suit is maintainable in the eyes of law.

Next Issue No.2 is taken up for consideration and determination.

Issue No.2:-

Cause of Action is a bundle of fact which is the foundation of the suit which gives right to the plaintiff to institute the suit. In this suit the plaintiff has prayed for grant of Probate of the Will executed by the testator Badal Chandra Das.

On the contrary the defendants nos.2 to 7 have contested this suit by stating that the suit property is a Thika property so this instant suit is barred U/Sec.21 of West Bengal Thika Tenancy Act, 2001 and that said Badal Chandra Das was an old ailing person and due to his old age was absolutely bed ridden and unable to recognize his family members of his own and this suit has been instituted by the plaintiff by suppressing all the materials facts before the Court. Therefore, the rival contention of both the parties is a clear indication that the plaintiff has a Cause of Action to sue

the defendant. Accordingly, Issue No.2 is replied in favour of the Plaintiff.

Issue Nos.3 and 4 are taken up conjointly for consideration and brevity of discussion.

Issue Nos.3 and 4 :-

From the testimony of the attesting witness PW-2 Debjani Adhikary it clearly appears that the said witness has stated that he has signed on the Will dated 06.07.2017 and the testator has signed on the Will in her presence. The said Will of the testator is registered in Sealdah Court. The contents of the Will has been read out by the testator himself and another witness Pradip Majumdar has also signed on the Will. He has identified the Will and the Registration Office. In her cross-examination, she has further stated that when the Will was typed she along with the testator and Ld. Advocate were present. As per instruction of the testator Badal Chandra Das the said Will was typed and on the self-same day the said Will was registered before ADSR, Sealdah. He has further stated that when the Will was placed before ADSR, Sealdah the testator Badal Chandra Das at first put his signature and as per instruction of Badal Chandra Das she signed thereafter on the Will.

PW-1, the plaintiff has filed the original Death Certificate of the testator Badal Chandra Das.

Therefore, it appears that the plaintiff has complied with the provisions of Section 63 of the Indian Succession Act along with Section 68 of the Indian Evidence Act.

According to Section 63 of the Indian Succession Act, 1925 the testator shall sign affix his mark to the Will to give effect to the writing as a Will and 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.....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.

Section 68 of the Indian Evidence Act envisages that if a document is required by law to be attested it shall not be used as evidence until 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.

Although the defendants have contended that the plaintiff was bed ridden being 80 years old and could not identify anyone, but not a single scrap of paper has been filed to establish the said contention.

It is trite to mention that all legal formalities for preparation of Will duly complied with and the Will was properly executed and duly attested by witnesses, one attesting witness prove the signature of the testator and she saw the testator signing on Will, petitioner discharged the burden to prove the last Will. **2025(1) ICC 992 (Cal)**

It is also noteworthy to mention that it is not for the testamentary court to decide the issue of title and the said court will also not decide as to whether the testator had any title to the suit property or not. The limited jurisdiction of the testamentary court is to decide the genuineness of the Will.

Therefore, in view of above initiated discussion I find that the propounder has been successful in proving the proper execution of the Will and dispelled all the suspicious circumstances, he is entitled to get the probate of the Will as prayed for.

Accordingly, issue nos.3 and 4 are replied in favour of the plaintiffs.

As a result, the suit succeeds.

Court Fees paid is correct.

Hence, it is,

O r d e r e d

that the Other Suit No.01 of 2023 be and the same is allowed on contest against the defendants.

Let the Probate of the last Will and Testament duly executed on 06.07.2017 by Badal Chandra Das, since deceased, be granted in favour of the plaintiff along with the copy of the Will.

BC-I to assess the Stamp Duty payable.

There is no order as to costs.

Original Will be placed in the custody of probate division of the Court.

Fix 30.06.2026 for payment of stamp duties.

Dictated and corrected by me

Additional District Judge,
Fast Track, 2nd Court, Sealdah.

Additional District Judge
Fast Track, 2nd Court, Sealdah.