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IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY & INTESTATE JURISDICTION
ORIGINAL SIDE.

TS/26/2018
IA NO: GA/1/2018(Old No:GA/558/2018), GA/6/2023
IN THE GOODS OF:
GIRINDRA KISHORE PAL CHOUDHURY, DEC. –
AND
VS
RANJUSREE PAL
-VS-
SUPARNA PAL CHOWDHURY & ORS.

BEFORE
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date: September 17, 2024.

Appearance :
Mr. A.C. Kar, Adv.
Ms. Sarmila Das, Adv.
...for plaintiff

The Court:- Witness Ms. Ranjusree Pal is present in Court.

At the time of proving the execution of the Will by the witness, objection was raised by defendant no. 2 on the ground that the witness is not proper person to identify the signature of the testator.

Since the defendant no. 2 failed to appear on the last occasion i.e. on 22nd August, 2024, learned Advocate on record for the plaintiff was directed to give a notice to the learned Advocate for the defendant no.2 intimating the next date.

Affidavit-of-service is filed in compliance thereof. Upon perusal of the same it appears that notice has been duly issued and delivered to the learned Advocate on record.

Despite service of notice, none appears on behalf of the defendant no.3.

Mr. A.C. Kar, learned Senior Counsel appearing on behalf of the plaintiff submits that since the attesting witness has denied execution of the Will, Section 71 of the Evidence Act will apply to prove the execution of the Will by other evidences. Therefore, the witness having knowledge of the signature of testator is proper person to identify such signature of the testator and to prove the execution of the Will. To buttress his contention, he relies upon the decision of the Hon'ble Supreme Court passed in ***Janki Narayan Bhoir versus Narayan Namdeo Kadam*** reported in ***(2003) 2 SCC 91***.

Aid of Section 71 of the Evidence Act, can be taken only when the attesting witnesses, who have been called, deny or fail to recollect the execution of the documents to prove it by other evidence. Upon going through the materials on record, this Court is the view that such execution of the Will can be proved by attending witness in the facts and circumstances of the case as has been rightly submitted on behalf of the plaintiff-petitioner relying on *Janki Narayan Bhoir (supra)*.

List this matter on 19th September, 2024 under the heading "Witness Action".

(BIVAS PATTANAYAK, J.)

GH.