

OD-13

IN THE HIGH COURT AT CALCUTTA  
Testamentary and Intestate Jurisdiction  
ORIGINAL SIDE

TS/1/2022

IN THE GOODS OF  
SRI DHIRENDRA MOHAN OJHA (DEC.)  
-AND-  
SMRITIREKHA OJHA AND BIVA NANDY  
VS  
MUKTI OJHA (KUMAR), MALA OJHA (KUNDU)  
DIPTI OJHA, TRIPTI OJHA (ROY) BANANI OJHA (INDU)

BEFORE:

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 26<sup>th</sup> April, 2024

*Appearance:*  
*Mr. S. Ganguly, Adv.*  
*Ms. Suparna Basu, Adv.*  
*Mr. Manabendranath Bandyopadhyay, Adv.*  
*...for the propounders.*

The Court:- The instant application for grant of probate has been initiated at the instance of two executors, namely, Mrs. Smritirekha Ojha and Mrs. Biva Nandy. According to them, Sri Dharendra Mohan Ojha who died on 25.10.2017 at Narayani Superspeciality Hospital, Barasat, had made his last Will and Testament on 30.08.2017 whereby he appointed the above petitioners as joint executrix. After his death, the probate application has been filed showing the names of his legal heirs. It appears from the record that there are seven legal heirs which include his wife, one son and five daughters. After citations were effected, five daughters appeared and submitted caveats and in support of such

caveats, one affidavit was filed. The matter became contentious accordingly. Issues were framed on 6<sup>th</sup> September, 2023 and subsequent to framing of issues the caveatrix did not appear and did not contest in spite of getting sufficient opportunities. However, the plaintiffs have been able to examine two attesting witnesses, namely, Mr. Sahidullah and Mr. Arun Goswami as witness no.1 and witness no.2 respectively. On 25.04.2024 this Court passed an order discharging the caveat filed by the five daughters of the deceased.

After going through the records, it appears that the attesting witness being PW-1, Mr. Sahidullah has stated on oath that the testator affixed his signature on the Will in his presence. He has further stated that the testator, Sri Dhirendra Mohan Ojha, since deceased, had made the said Will out of his own accord and when he was in sound mind. The said witness has also been able to identify the signatures of the testator and other witnesses.

PW-2, Mr. Arun Goswami has also identified the relevant Will as the Will of Sri Dhirendra Mohan Ojha. He has also deposed that the testator has signed on all the pages of the Will. According to PW-2, apart from Sri Dhirendra Mohan Ojha, one Mr. Sahidullah and he himself were present at the time of execution of the said Will. He has also deposed on the question put to him by the Court that he had seen the testator to sign the document.

It appears from the record that in spite of having the opportunity to cross-examine the said witnesses, the defendants did not take any steps to cross-examine them. It is a settled principle of law that when statements are made on oath and the same remain uncontroverted and unchallenged by the other sides

in spite of having opportunity to do so, such statements shall be deemed to have been admitted by them.

In view of the above unchallenged testimonials of the attesting witnesses, it appears that the plaintiffs have been able to prove their case in accordance with law.

Let there be an order in terms of prayer (c) of the original application, subject to compliance of all the legal formalities.

TS/1/2022 stands disposed of accordingly.

(APURBA SINHA RAY, J.)