

OD-35

ORDER SHEET

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

TS/12/2022
IA No.GA/2/2023

IN THE GOODS OF:
PANCHANAN BISWAS, DECEASED
-AND-
MEKHALA KANJI
-VS-
SAMPA GHOSH

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : December 12, 2024.

Appearance:
Mr. Vikas Baisya, Adv.
Ms. Ranjana Seal, Adv.
... for the plaintiff

Mr. Joyak Ghosh, Adv.
Ms. Chandramala Mukherjee, Adv.
... for the defendant

The Court: Mr. Vikash Baisya, learned Advocate, is appearing for the plaintiff.

Mr. Joyak Ghosh, learned Advocate, is appearing for the defendant.

Both the parties have filed their suggested issues. Let the same be kept with the record.

After considering the submission made by the counsel for the respective parties and suggested issues, the following issues have been framed :-

:- I S S U E S :-

1. Did the testator have testamentary capacity in executing the Will dated 29th September, 2018?
2. Is the Will unnatural and shouted by suspicious circumstances?
3. Did the testator execute the Will out of his free will and without any influence by any person?
4. Is the plaintiff entitled to get a grant of Probate of the Will dated 29th September, 2018?
5. Whether the application for granting Probate now converted into Testamentary Suit being T.S. No. 12 of 2022 is maintainable or not?
6. Whether the so called Last Will dated 29th September, 2018 was at all executed by the Testator or not?
7. Whether the testator was at all in sound mind state and mentally alert during the course of execution of so called Will dated 29.09.2018?
8. Was the Will executed out of own will and volition of Deceased?
9. To what relief or reliefs, if any parties are entitled to?

The plaintiff has filed an application being GA/2/2024 praying for appointment of commissioner for examination of the attending witness on commission on the ground that the attending witness is an old aged person.

This Court finds that after receipt of the affidavit in support of caveat, the probate application has been converted into contentious cause

and treated as Testamentary Suit. The defendant is contesting the suit and the plaintiff has to prove the case in accordance with law and as per the Will there are two attesting witnesses. Now, the plaintiff intends to examine the attending witness. Thus, at this stage, this Court is not inclined to entertain the application and accordingly, let the application remain pending till the completion of examination of the other witnesses.

Defendant has filed affidavit of documents. Let the same be kept with the record.

Counsel for the plaintiff prays for time to file Judge's Brief of Documents. Let the same be filed within one week after winter vacation.

List the matter on 6th February, 2025 at 2:00 pm.

Affidavit of service filed by the plaintiff be kept with the record.

(KRISHNA RAO, J.)

RS