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IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Ordinary Original Civil Jurisdiction

PLA No. 114/2010

IN THE GOODS OF: PASHUPATI NATH
BANERJEE (DECEASED)

Before:

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 17th September 2025

APPEARANCE

Mr. Sarosij Dasgupta, Adv.
Mr. Sourath Nath Dutt, Adv.
Mrs. Subhra Das, Adv.
...for the petitioner

The Court: This is an application for grant of probate of the Last Will and testament dated 21st February 1997 of the deceased Pashupati Nath Banerjee to the applicant/executrix throughout the State of West Bengal.

The contention of the applicant/executrix may be summed up thus;

- 1) That Pashupati Nath Banerjee the deceased who was during this lifetime and at the time of death Hindu governed by the Dayabhaga School of Hindu Law died on 17th March 2009. The said deceased died at 22/B Janak Road Tollygunge, Kolkata.
- 2) The said deceased during his lifetime had made and published his Last Will and testament dated 21st February 1997. By the said Will the petitioner/applicant was appointed as executrix. By the said Will the deceased has bequeathed inter alia his right in the second Floor Flat No. 4 measuring 1475 Sq. ft. more or less at plot no. 8 in Block CA in sector I Bidhannagar Salt Lake City Kolkata 700054. The said Will was registered with the Registrar of assurances Kolkata on 21st February 1997.

- 3) The deceased was married to one Jharna Banerjee and the said Jharna Banerjee expired on 29th March 2009.
- 4) The estate of the said deceased would have devolved upon the following persons in the event the said deceased died intestate according to the provisions of Hindu Succession Act 1955.
 - i) Mr. Swaraj Kumar Banerjee – Son of the deceased
 - ii) Mrs. Rachana Chatterjee – Daughter of the deceased
 - iii) Ms. Ananya Banerjee – Daughter of the deceased

5. The heirs of the deceased at the time of filing application for grant of probate did not give consent.

Pursuant to filing of the application both general citation and special citation were issued, and caveat was filed by Swaraj Kumar Banerjee. As no affidavit was filed in support of the caveat the case was fixed under the heading non-contentious and caveat was discharged.

Affidavit of Assets was filed with this application.

One of the attesting witness namely Asit Kumar Bhattacharya affirmed an affidavit stating that he was present at the time when the testator signed his Last Will at plot no. 8 in Block CA in sector (I) Bidhannagar (Salt Lake City) Kolkata 700064 and the signature in English language is appearing of the foot of the said Will as “Pashupati Nath Banerjee.” The attesting witness has further deposed that it is the proper handwriting of the deceased and was affixed in his presence and in the presence of Mr. Manik Chandra Malakar Advocate of City Civil Court at Calcutta and Dr. Basudev Dutta, the other attesting witnesses to the said Will of the deceased. It is also stated that he and Mr. Manik Chandra Malakar and Dr. Basudev Dutta at the request of and also in presence of the said deceased affixed their respective signatures of the said Will as attesting witnesses. It is contended that the deceased had testamentary capacity and executed the said Will in sound State of body and

mind and out of his free will and volition.

Heard Learned Advocate for the petitioner/Executrix. Perused the petition filed and materials on record.

Upon perusing the petition filed and the materials on record this Court is of the view that the testator had the mental capacity as provided under Section 59 of the Indian Succession Act, the Will was executed upon compliance of Section 63 of the Indian Succession Act 1925 and one of the attesting witnesses have declared about execution of Will as required under Section 68 of the Evidence Act. Thus probate should be granted.

Thus this application stands allowed. Probate of the last Will and testament dated 21st February 1997 of the deceased Pashupati Nath Banerjee is granted to the petitioner as executrix with effect throughout the State of West Bengal. Let probate be issued upon compliance of all necessary formalities.

(BISWAROOP CHOWDHURY, J.)