

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

IA NO. GA/3/2025
In TS/1/2020

IN THE GOODS OF :
RATAN CHANDRA SETT, DECEASED

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 12th September, 2025

Appearance:
Mr. Rahul Karmakar, Adv.
Mr. Lalratan Mondal, Adv.
Mr. S. Mukherjee, Adv.
..for the Plaintiff
Mr. Subrata Kumar Dutt, Adv.
Mr. S. Misra, Adv.
...for the Defendant

The Court: GA 3 of 2025 is filed on behalf of one Smt. Susmita Pal, praying for recording death of the sole Executrix of the probate proceeding; conversion of the instant Testamentary suit into one for grant of Letters of Administration, transposition of the Petitioner in the place of the Executor; leave to amend the plaint and other alive directions. It is contended that the sole Executrix and beneficiary who was the wife of the Testator expired on 24/09/2022. The present Petitioner, her sister and the Caveator are the legal heirs and successors.

The application is objected to principally on the ground that the deceased Manika Sett, being the wife of the Testator was the sole Executrix cum sole beneficiary of the purported will of Ratan Chandra Sett. On death of sole Executrix,

the instant proceeding has become infructuous and the assets should devolve on the legal heirs and representatives, namely, the Petitioner, the Caveator/Defendant and on the other daughter. At the time of argument, the Learned Counsel for the Defendant submitted that the office of the Executor is not heritable and on death of the sole Executor or the last Executor right to sue does not survive for which the probate proceeding becomes infructuous. It was further contended that the Petitioner is even not the beneficiary. Therefore, she has no *locus standi* to pray for conversion of the proceeding into one of Letters of Administration or to proceed with.

Mr. Karmakar, the Learned Counsel for the Petitioner submitted that on death of the Executor it behaves on the beneficiaries to convert the proceeding for grant of probate into one for Letters of Administration. Therefore, the instant application is maintainable. Mr. Karmakar relied on **Vatsala Srinivasan Vs. Shyamala Raghunathan [(2016) 13 SCC 253]** as well as a Single Bench judgment of this Court **In the Goods of Samarendra Nath Bal (Deceased) [(2010) SCC OnLine Cal 23]**.

Law is well-settled. In **Shambhu Prasad Agarwal & Ors. Vs. Bhola Ram Agarwal [(2000) 9 SCC 714]** Three Judges Bench of the Supreme Court of India observed that where an Executor dies, his heirs cannot be substituted because the Executor possessed personal right but this is not applicable where the heirs of a legatee apply for issue of Letters of Administration. In other words, heirs of a legatee may carry on the proceeding but in the form of a proceeding for issue of Letters of Administration. In **Vatsala Srinivasan's** case the Supreme Court of India approved the view of the Division Bench of the Bombay High Court that essence of the proceedings both for grant of probate as well as grant of Letters of Administration are of the same nature and cannot abate; they relate to ascertainment

of genuineness and authenticity of a will. The main purpose of the probate proceeding is to establish of a will. The function of an Executor is to execute the will. The main function can be well-achieved by obtaining of a Letter of Administration so that property can be administered by the Administrator as par Section 232 of the Succession Act, 1925.

The sole Executor died in this case. She was the sole beneficiary. Though the office on Executorship cannot devolve and right to sue does not survive yet the interest of a legatee or beneficiary devolves upon her heirs and successors and right to sue survive. The sole Executrix was also the sole beneficiary. In the later capacity her right, title, interest as well as right to sue survives. In that capacity, being the legal heir and successor of sole beneficiary, the present Petitioner can well-maintain the proceeding converting the same into want of Letters of Administration.

Therefore, for grounds aforesaid, the instant application is considered favorably.

Prayers (a) to (e) of the Masters Summon are allowed.

GA 3 of 2025 stands disposed of. The Petitioner may be arrayed as a Plaintiff.

Let the suit appear in the list for further order on 19th November, 2025.

(SUGATO MAJUMDAR, J.)