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

PLA No. 206/2010

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 Tollygunj, Kolkata.
- 2) The said deceased during his lifetime had made and published his last Will and testament dated 21st February 1997. The deceased had got the Will registered with the Registrar of Assurances Kolkata at 21st February 1997. By the said Will the deceased has appointed the applicant as executrix to his said Will. By the said Will the deceased has bequeathed inter alia his right in the third floor of Flat no. 7 measuring about 1370 sq. ft. more or less in Plot no. 8 in Block CA in sector I Bidhannagar Salt Lake City Kolkata 700064 only to the petitioner.

- 1) The deceased was married to Jharna Banerjee and the said Jharna Banerjee expired on 29th March 2009.
- 2) The estate of the said deceased would have devolved upon the following Legal heirs in the event the deceased would have died intestate.
 - 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 final 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 Assests was filed in probate application.

One of the attesting witnesses namely Dr. Jayanta Basu affirmed an affidavit that he was present at the time and seen 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 appearing at the foot of the said Will as “Pashupati Nath Banerjee,” is the proper handwriting of the said deceased and it was affixed in his presence and in the presence of Mrs. Suvra Das Advocate High Court Kolkata and Mr. Manik Chandra Malakar Advocate City Civil Court Kolkata, the other attesting witnesses to the said Will of the deceased. He also deposed that he, Mrs. Suvra Das, and Mr. Manik Chandra Malakar at the request of and also in presence by the said deceased affixed their respected signatures on the said Will as attesting witnesses. The attesting witness has deposed that the deceased had testamentary capacity and executed the said Will in fit State of body and mind and out of free his Will and volition.

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

Upon the 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 has 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.)