

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/7/2026
IA NO: GA/1/2025, GA/2/2026

IN THE GOODS OF:
GIRISH CHANDRA JANA (DEC.)
-AND-
BISHAD KUMAR JANA
-VS-
SMT. SWAPNA HALDER (JANA) AND ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
AND
The Hon'ble JUSTICE MD. SHABBAR RASHIDI
Date : April 6, 2026.

Appearance:
Mr. Amitava Mukherjee, Sr. Adv.
Mr. Sourajit Dasgupta, Adv.
Mr. Subir Sabud, Adv.
...for the appellant.

Mr. J. L. Ray, Adv.
...for respondent no. 3.

The Court: Appeal is directed against the order dated November 13, 2025.

By the impugned order, learned Trial Judge, dismissed the application for grant of probate.

The learned Trial Judge held that, the propounder was unable to establish that both the attesting witnesses expired at the time of trial.

Learned Senior Advocate appearing for the appellant submits that, both the attesting witnesses expired prior to the witness action commencing. He submits that, there are death certificates in respect of both the attesting witnesses. If allowed, the appellant will be in a position to produce such death certificates at the trial.

Learned Advocate appearing for the respondent submits that, the appellant was well aware of the death of the two attesting witnesses. Nonetheless, the appellant chose to not to produce the death certificates at the trial. Therefore, according to him, the appellant should not be permitted to adduce any further evidence.

We find from the records that, the appellant before us is the propounder of the Will of the deceased. Appellant is one of the Executors beneficiaries of the Will. Respondents are the heirs and legal representatives of the other Executor appointed by the deceased.

The learned Trial Judge proceeded on the basis that, the death of the two attesting witnesses was not established at the trial.

Since, there are death certificates of the two attesting witnesses, it would be appropriate to set aside the impugned order and remand TS/26/2016 for fresh trial. We clarify that we did not enter into the arena of the rival contentions of the parties as to the knowledge of the death of two attesting witnesses and the effect thereof. All points taken by the parties in this regard are kept open.

APO/7/2026 along with all connected applications are disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)