

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MFA No.04 of 2022

1.

.....Appellant

-VERSUS-

1. Smti. Milan Debnath
2. Sri Biswajit Gupta,
3. Smti. Mitali Gupta

.....Respondents

B E F O R E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. Sankar Bhattacharjee, Advocate. Mr. S. Noatia, Advocate.
For Respondent(s)	:	Mr. T. K. Deb, Advocate.
Date of hearing	:	01.06.2023
Date of delivery of judgment and order	:	03.06.2023
Whether fit for reporting	:	YES

JUDGMENT & ORDER

Heard Mr. Sankar Bhattacharjee, learned counsel assisted by Mr. S. Noatia, learned counsel appearing for the appellant also heard Mr. T. K. Deb, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-299 of Indian Succession Act, 1925 read with Order-XLI Rule-1 of Code of Civil Procedure, 1908 (as amended up to date) against the judgment passed in T.S.(Probate) 01 of 2014 by the learned District Judge, North Tripura, Dharmanagar on 06.04.2022.

[3] The fact of the case of the appellant, in short, is that the testator Dhruba Kanti Gupta died at his residence on 12-03-2012. During the lifetime of deceased Dhruba Kanti Gupta his relation with his wife, son and daughter was not good and due to such bitter relation about 14 years ago his wife left his house along with her son and daughter and started living separately in her personal residence at Padmapur under Dharmanagar Sub-Division. During that period the appellant used to look after said Dhruba Kanti Gupta by nursing, cooking meal and helping to get medical treatment etc. and the appellant has been permanently residing in the house of Dhruba Kanti Gupta and being satisfied said Dhruba Kanti Gupta executed a registered Will dated 29-05-1997 before the Sub-Registrar, Dharmanagar in favour of the appellant, Smt. Niyati Das in respect of his all movable and immovable properties including gratuity, provident fund and deposited money in the Bank and Post Office.

[4] It is also stated that the appellant was named as the executor in the said Will and she is entitled to get movable and immovable properties including the money deposited in Bank as per description of the Will according to the last desire of the testator. But the appellant could not give details list of all assets and the debts of the deceased Dhruba Kanti Gupta as just after the death of Dhruba Kanti Gupta the present Opposite Parties forcefully captured all the documents of bank and post office, ration card including documents of landed properties and they forcefully drove out the appellant from the house of the deceased.

[5] It has been further stated that the deceased left behind Smt. Milan Debnath as his wife, Sri Biswajit Gupta as his son and Smt. Mitali Gupta as his daughter as his legal heirs and survivors but due to their misconduct and misbehaviour with the deceased Dhruba Kanti Gupta he being dissatisfied with them executed the said Will in favour of the appellant. Thus, the appellant has prayed for a direction to the respondents to produce the documents in connection with the Will and grant probate of the Will in favour of the appellant.

[6] After hearing the parties and having gone through the material evidence on record, the learned Court below has observed as under:

“In view of the above discussion and findings the application filed by the petitioner, Smt. Niyati Das under Section-276 of the Indian Succession Act, 1925 for grant of a probate of the Will executed by Dhruva Kanti Gupta (now deceased) is hereby rejected.

The parties to this suit shall have to bear their own costs.

Senior Sheristadar is hereby directed to prepare a decree immediately.

This suit is accordingly disposed off on contest.

Make necessary entry in TR.”

[7] Being aggrieved by and dissatisfied with the said judgment of the learned Court below, the appellant herein has preferred the present appeal before this Court for redress.

[8] Mr. S. Bhattacharjee, learned counsel appearing for the appellant has submitted that the learned Court below has erred in law and came to an erroneous conclusion as such the judgment passed by the learned Court below is liable to be set aside. The learned Court below misinterpreted the clauses of the WILL and completely on imagination draws inference while the respondents in spite of submitting written statement did not enter into witness box to rebut the evidence of the appellant.

[9] The learned Court while decided the issue No.II has proceeded to discussed irrelevant presumptions. While discussing the issue No.II it has been observed that the present appellant as PW-1 could not explain while the WILL was signed on 09.05.1997 and registered on 29.05.1997. It has been also mentioned that in the WILL the testator did not mentioned that the WILL shall be presented before the Sub-Registrar, Dharmanagar, North Tripura but, the learned Court below has failed to appreciate that the appellant had no opportunity to read the mind of the testator why he has signed the WILL on 09.05.1997 and registered it on 29.05.1997. Thus, the appellant cannot be faulted with the non-

explanation of the testator. The appellant never denied that the WILL was executed on 09.05.1997 and registered on 29.05.1997 and as such, the findings of the learned Court below cannot be sustained in the eye of law.

[10] He has further contended that the learned Court below while deciding issue No. III discussed and come to the conclusion that the WILL does not bear any description of the WILL but the learned Court has failed to read the contents of the WILL. There is no specific form for any WILL and the Court has to read so as to determine the question as to object and subject of WILL but, the learned Court below has most wrongly held that there was nothing in record that testator had right, title, interest over the suit land at the time of execution of WILL as such the findings of the trial Court in respect of issue No. III is liable to be interfered with.

[11] While deciding issue No.IV and VI, the learned Court below has completely misread the provision of Section-276 of the Indian Succession Act, 1925 wherein, it has been specifically stated what shall be the contents of the petition for probate and there is no scope for incorporating any clause. But the learned Court below has found fault with the appellant that in spite of the fact that she knew that the deed writer and the attesting witnesses were no more in the world, she did not mention such fact in the pleading. As such, the findings of the learned Court below need to be interfered with.

[12] In support of his case, he has placed reliance on a decision of the Apex Court in *Shewantabai v. Arun and Another*, reported in **[2020 (1) Civil Court Case 199 = (2019) 3 RCR (Civil) 311]**, wherein it has been held thus:

“We have heard the learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that there are concurrent finding of fact recorded by the First Appellate Court as well as by the High Court on genuineness of the Will which was under challenge

before the Trial Court. Merely because the testator executed the Will in favour of the neighbour, the genuineness of the Will cannot be doubted.

We are in complete agreement with the view taken by the High Court. At this stage learned counsel appearing on behalf of the appellant has submitted that the appellant, the widow of the deceased testator is an old lady and the entire agricultural property as well as the house is bequeathed in favour of the neighbour and it will be difficult for her to maintain herself in this old age.

The present appeal stands disposed of in the above terms. The impugned order is hereby confirmed subject to above terms.”

[13] After hearing the learned counsel appearing for the parties and having gone through the material evidence on record and the observations made by the learned Court below, for a definite conclusion, let us revisit the discussion and the evidence once again.

[14] After registration of the suit initially order was passed directing ex-parte hearing of the suit against all the opposite parties as they did not appear before the court even after receipt of notice in connection with this suit. However, subsequently all the three opposite parties appeared before the Court and filed separate applications for vacating the ex-parte order passed against them and after allowing their applications, all the three opposite parties contested this suit by submitting their separate written statement.

[15] In their respective written statements the opposite parties denied and disputed each and every averments made in the application by the appellant and raised objection regarding genuineness of the so called last Will of deceased Dhruva Kanti Gupta. It is also pleaded by the opposite parties that deceased Dhruva Kanti Gupta did never execute any Will in respect of his movable and immovable properties including the service benefits in favour of the appellant rather the appellant has approached before the Court for granting a probate in respect of the so called last Will of deceased Dhruva Kanti Gupta submitting some false and fabricated documents.

[16] In the written statement of the respondent No.2, it has been stated that after registration of this suit he obtained some documents through RTI in respect of the death certificate of his father Dhruba Kanti Gupta bearing serial No.416, registration No.24 dated 12-03-2012 as submitted by the appellant along with her application under Section-276 of the Indian Succession Act, 1925 and came to learn that the death certificate against registration No.24 was actually issued on 20-01-2013 in favour of the deceased Sanjita Sabdakar, the three months old female baby, of Sri Pinku Sabdakar of village-Chandrapur, Subhash Colony under Dharmanagar Sub-Division.

[17] Mr. T.K. Deb, learned counsel appearing for the respondents at the outset of his argument draws attention of this court towards the order sheets dated 21-04-2016, 24-05-2016, 08-06-2016, 22-06-2016, 15-09-2017 and 10-11-2017 and submits that from the aforesaid order sheets it would be clear to this court that the appellant was very much reluctant to serve notices upon the respondents in-spite of several directions of the Court for her wrongful gain. Referring the registered Will in Exhibit-1 he has further contended that no father's name and address of the attesting witnesses were mentioned in the Will itself to conceal the actual fact and thereby to obtain a probate from the court by proving a false and fabricated registered Will allegedly executed by deceased Dhruba Kanti Gupta, the predecessor-in-interest of the present respondents.

[18] It is further argued that the cross-examination of P.Ws No. 2, 3 and 4 will show how the evidence of those witnesses has been recorded by the appellant to prove the genuineness of the so called last Will of deceased Dhruba Kanti Gupta whereas, Section-68 of the Evidence Act itself provides as to how the evidence of attesting witnesses should be recorded. It is further argued that for determination of the suit the evidence of the Court Witnesses No. 1 and 2 is to play a vital role

who deposed the actual fact before the court regarding the death certificate of deceased Dhruba Kanti Gupta whereas, from the evidence on record, it has been revealed that against the serial number of the death certificate of Dhruba Kanti Gupta actually death certificate of one female baby was issued from the Dharmanagar Sub-Divisional Hospital.

[19] The appellant in her affidavit in chief has stated that on 29-05-1997 AD deceased Dhruba Kanti Gupta had executed a registered Will in favour of her bequeathing his all movable and immovable properties including his bank deposit, gratuity, provident fund, post office deposit etc. In the name of the appellant after death of testator Dhruba Kanti Gupta and subsequently on 12-03-2012 testator Dhruba Kanti Gupta died at his own residence situated at Office road, PO & PS-Dharmanagar, North Tripura. She has further deposed that during lifetime of Dhruba Kanti Gupta his relation with his wife, son and daughter i.e. the respondents herein was not good enough and due to that bitter relationship they used to reside in another house at Padmapur, Dharmanagar since 14/ 15 years back from the date of execution and during those days the wife of the respondent No.1 even did not allow her son and daughter i.e. the respondent Nos.2 and 3 keep any relation with their father Dhruba Kanti Gupta (now deceased).

[20] It is also deposed that due to such helpless situation Dhruba Kanti Gupta (now deceased) being a Govt. Employee was not in a position to enjoy his day to day life properly and by that time somehow the appellant was acquainted with said Dhruba Kanti Gupta and on his desire she started to look after Dhruba Kanti Gupta doing all the household works of Dhruba Kanti Gupta and also nursing him during his illness and being satisfied with the service rendered by the appellant said Dhruba Kanti Gupta ultimately executed a registered Will in favour of her in respect of his all movable and immovable properties. She has

further deposed that immediately after the death of Dhruba Kanti Gupta his wife, son and daughter forcefully captured all the documents issued in land records, service records etc. of deceased Dhruba Kanti Gupta and drove out her from the house of deceased Dhruba Kanti Gupta and locked the doors of that house for which she could not submit any document before the court relating to movable and immovable properties of the deceased.

[21] In support of her pleadings she has proved the registered Will and the death certificate of deceased Dhruba Kanti Gupta and she also examined three other witnesses who identify the signatures of the attesting witnesses on the registered Will. It appears from the registered Will (Exhibit-1) that a condition was inserted in the said Will by the testator Dhruba Kanti Gupta that after his death, the appellant, being the executor of the Will shall obtain a probate in respect of that Will from the appropriate court of law. As per oral and documentary evidence adduced by the appellant, testator Dhruba Kanti Gupta was died on 12-03-2012 and the appellant being the executor of the Will filed her application under Section-276 of the Indian Succession Act, 1925 before the court on 18-12-2014. Accordingly, there is no doubt that the application filed by the appellant under Section-276 of the Indian Succession Act, 1925 is apparently very much maintainable in its present form.

[22] But in her cross-examination she has admitted that she had been working as maid servant in the house of deceased Dhruba Kanti Gupta and taking care of him for about 19 years before the death of said Dhruba Kanti Gupta in his residence at Post Office road, Dharmanagar. It is also admitted in her cross-examination that the Will in question was signed by the deceased on 09-05-1997 but it was registered on 29-05-1997. From Exhibit-1 it has been revealed that the Will was executed on 09-05-1997 but testator Dhruba Kanti Gupta did not put the date below

his signatures on the said Will. Admittedly the appellant could not examine the writer of the Will and both the attesting witnesses on a plea that all of them are no more in this world.

[23] Registration of a Will is not at all compulsory in the eye of law and upon perusal of the Will in Exhibit-1 it is found that there was no clause in writing that the said Will shall be presented before the Sub-Registrar, Dharmanagar, North Tripura for the purpose of registration on any subsequent date but the appellant being the executor of the said Will neither in her pleadings nor in her oral evidence explained the situation which compel the so called testator of the Will to present the Will before the Sub-Registrar, Dharmanagar, North Tripura for its registration after lapse of twenty days from the date of execution of the Will by the testator Dhruba Kanti Gupta.

[24] As per oral evidence adduced by the appellant, the attesting witnesses put their respective signatures on the Will in question on 09-05-1997 and it is also an admitted fact that both the attesting witnesses neither disclosed their father's name and the residential addresses after putting their respective signatures at the foot of the Will. The appellant also did not examine any staff of the office of the Sub-Registrar, Dharmanagar, North Tripura as a witness before the court to prove the fact that the similar attesting witnesses were produced before the Sub-Registrar, Dharmanagar, North Tripura on 29-05-1997 at the time of registration of the Will while the office of the Sub-Registrar, Dharmanagar, North Tripura did not obtain signatures of those attesting witnesses on the reverse pages of the Will on 29-05-1997. In view of the aforesaid fact on record it is very much clear that the deceased Dhruba Kanti Gupta did not execute any Will on 29-05-1997 rather it was executed on 09-05-1997 in favour of the appellant.

[25] In her examination-in-chief it has been clearly stated that as just after the death of Dhruba Kanti Gupta the respondents drove out the appellant forcibly from the house of the deceased and locked all the doors of that house and as such appellant could not submit any document in respect of the movable and immovable properties of deceased Dhruba Kanti Gupta before the court. Admittedly Exhibit-1 i.e. the registered Will executed by Dhruba Kanti Gupta does not bear any description of his landed properties in the schedule of the properties for which the court is also in complete dark about the exact plot of land which was owned and possessed by deceased Dhruba Kanti Gupta before his death on 12-03-2012. The appellant by adducing oral and documentary evidence has failed to produce the record of rights of a particular plot of land owned and possessed by deceased Dhruba Kanti Gupta before his death. Accordingly, nothing in record that testator Dhruba Kanti Gupta had right, title and interest over the suit land at the time of alleged execution of Will.

[26] To prove the execution of the Will in question by deceased Dhruba Kanti Gupta, the appellant examined PW 2, Sri Debashish Chakraborty, PW 3, Sri Ranu Roy and PW 4, Sri Birendra Debnath. PW 2, Sri Debashish Chakraborty in his affidavit-in-chief has stated that he is a deed writer by profession and as a member of Dharmanagar of Deed Writers' Association he knew the deceased deed writer of Dharmanagar Deed Writers' Association namely Late Nalini Ranjan Biswas who had drafted the registered Will of Late Dhruba Kanti Gupta in favour of the appellant on 29-05-1997 and being a professional deed writer PW 2 is well familiar with the handwriting and signature of Late Nalini Ranjan Biswas.

[27] In his cross-examination it has been admitted that he does not know the exact date of death of said Nalini Ranjan Biswas, Deed

Writer and that at the time of drafting or execution of the registered Will of Late Dhruba Kanti Gupta and was not present at the particular place. It is also admitted that he started his carrier as a registered Deed Writer in the year 2006 and before that he was not a member of Dharmanagar Deed Writers' Association.

[28] The appellant being the executor of the registered Will of deceased Dhruba Kanti Gupta was very much aware who actually drafted the Will of deceased Dhruba Kanti Gupta and who were the persons put their respective signatures on the registered Will of said Dhruba Kanti Gupta as attesting witnesses. So, it may safely be presumed that at the time of filing of her application under Section-276 of the Indian Succession Act, 192, the appellant was aware about the fact that the concerned deed writer and the attesting witnesses of the Will of deceased Dhruba Kanti Gupta were no more in this world but surprisingly in her pleadings the appellant did not mention the name of the deed writer and the attesting witnesses even their actual identities but subsequently she made an attempt to prove the execution of the Will in question and signatures of the concerned Deed Writers and the attesting witnesses on the said Will by examining her three witnesses namely Sri Debashish Chakraborty (PW 2), Sri Ranu Roy (PW 3) and Sri Birendra Debnath (PW 4) who had admittedly no opportunity to remain present at the time of execution of the Will by deceased Dhruba Kanti Gupta during his lifetime.

[29] In her application under Section-276 of the Indian Succession Act, 1925 has specifically mentioned that as the wife and children of deceased Dhruba Kanti Gupta were not residing at the resident of Dhruba Kanti Gupta during his lifetime she has been permanently residing in the house of deceased Dhruba Kanti Gupta for taking care of said Dhruba Kanti Gupta and being satisfied said Dhruba

Kanti Gupta executed his last Will dated 29-05-1997 in favour of her regarding all movable and immovable properties of Dhruba Kanti Gupta (now deceased) including gratuity, provident fund and deposited money in the bank and post office but surprisingly in her examination-in-chief for an unknown reason did not state that she was permanently residing in the house of deceased, Dhruba Kanti Gupta whereas, it reveals from the case record that on 15-11-2021 she submitted a photocopy of post mortem examination report dated 13-03-2012 in respect of deceased Dhruba Kanti Gupta before the court by a firisti wherefrom, it has been revealed that the post mortem examination was done at Dharmanagar Hospital over the dead body of deceased Dhruba Kanti Gupta, on 12-03-2012 at 01.20 pm in connection with Dharmanagar PS UD case no. 11 of 2012 under Section-174 of the Code of Criminal Procedure dated 12-03-2012.

[30] One UD case is generally registered under Section-174 of Cr.P.C. when a human being faced unnatural death. From that post mortem examination report it is also found that the doctors conducted autopsy over the dead body of late Dhruba Kanti Gupta had opined that death of Dhruba Kanti Gupta was caused/occurred within 24 hours from the time of conducting post mortem examination. It is a general rule that when a post mortem examination is done over the dead body of a human being in connection with a police case, no final death certificate is issued in favour of the family members of the deceased rather a provisional death certificate is issued to the relatives of the deceased only for the purpose of cremation of the dead body but in this case she has proved one death certificate of Dhruba Kanti Gupta (Exhibit-2) which mentioned the place of death of deceased Dhruba Kanti Gupta at Dharmanagar Hospital whereas in her examination-in-chief has specifically mentioned that on 12-03-2012 AD Dhruba Kanti Gupta was died in his own residence at Office Road, Dharmanagar, North Tripura which ultimately confirmed by

the testimony of CW No.1, Sri Pradip Malakar that on 12-03-2012 no death certificate vide No. 416 with registration No. 24 dated 12-03-2012 was issued from Dharmanagar District Hospital in respect of deceased Dhruba Kanti Gupta whereas by submitting the concerned register of death the CW No.1 has confirmed that the death certificate of Dhruba Kanti Gupta which has been marked as Exhibit-2 as per identification of the appellant is a forged document.

[31] The burden of proof of execution of a Will as also the suspicious circumstances attached to execution of such Will always lies on the propounder of the Will who has to prove the due execution of Will and remove the suspicious circumstances from the mind of the court by cogent and satisfactory evidence. The case of the appellant is that deceased Dhruba Kanti Gupta during his lifetime had no good relationship with his wife and children for which deceased Dhruba Kanti Gupta used to reside at his own residence at Office road, Dharmanagar alone for about 14/ 15 years from the date of execution of the Will and that the respondent No.1 even did not allow her son and daughter to keep any relation with their father Dhruba Kanti Gupta (now deceased). So, from the story of the appellant itself it may safely be presumed that late Dhruba Kanti Gupta had not been passing his days in a peaceful condition. As between funeral fire and mental worry, it is the latter which is more devastating, for, funeral fire burns only the dead body while the mental worry burns the living one. This mental torment may become acute when the person with such mental worry is going to take his life's last big decision.

[32] From Exhibit-1 i.e. the registered Will of Dhruba Kanti Gupta it is found that in the last part of the Will it has been mentioned that only after death of testator Dhruba Kanti Gupta the said WILL would be effective and before that the testator Dhruba Kanti Gupta shall have

right to cancel that Will at any time before his death. The aforesaid clause in the registered Will of deceased Dhruba Kanti Gupta itself shows that at the relevant time the testator Dhruba Kanti Gupta was in the condition of mental instability i.e. why he was not sure whether he was going to take correct decision or not regarding execution of the Will in question and only for that reason he kept his right reserved in writing regarding cancellation of the Will during his lifetime.

[33] On the other hand, being the executrix or trustee, the appellant was very much aware about that clause of the last Will of deceased Dhruba Kanti Gupta. Facing of unnatural death by the testator Dhruba Kanti Gupta at his residence in the presence of the appellant and subsequently obtaining a forged death certificate of deceased Dhruba Kanti Gupta by the appellant, showing the place of death as District Hospital, Dharmanagar itself raise some reasonable suspicion regarding the genuineness of the Will (Exhibit-1).

[34] The procedure to resolve the inconsistency in a Will, latter clause in the Will inconsistent with earlier clause and in such of inconsistency the last intention of the testator is to be given effect, therefore, the latter clause is held to prevail over the earlier clause of the Will. In the present case testator Dhruba Kanti Gupta in the first part of his Will had bequeathed his all movable and immovable properties without giving details of the properties in favour of the appellant after death of the testator Dhruba Kanti Gupta but, in the last part of the Will he deserved his right alive for cancellation of the said Will at any point of time during his lifetime.

[35] It is an undisputed fact that the deceased person is a Government employee and he has bank accounts and service benefits apart from the land, which is the subject matter of the said Will. If the version of the appellant is to be believed that the deceased is alone and no

one has taken care and she is the only one, the deceased would have made the beneficiary the appellant herein in respect of his movable and immovable properties including all service benefits. But, nothing has been indicated except, the landed property and thus, it creates an amount of doubt in the mind of the Court and there is reasonable apprehension that since the deceased was an old aged man following old aged ailments, the appellant was looking after him, the so called maid might have executed the Will under duress without any free will and consent of the deceased. It is pertinent to mention herein that in respect of the claim of the appellant, no one has been examined and there is also no witness to support her claim. The judgment as placed by the learned counsel appearing for the appellant has no relevance with the facts and circumstances of the present case.

[36] In view of above, discussion and observation, the present appeal stands dismissed consequently, the findings as observed by the learned Court below stands affirmed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

JUDGE

A.Ghash

