

Bench:
Mr. Justice Bhishmadev Chakraborty
And
Mr. Justice Murad-A-Mowla Sohel

First Appeal No. 247 of 2017 (Probate)

Bichitra Halder and anotherAppellants
-Versus-
Minati Halder and others Respondents

Mr. Bivash Chandra Biswas, Senior Advocate with
Mr. Dipali Rani Das, Advocate
..... For the appellants

Mr. Chanchal Kumar Biswas, Advocate with
Mr. Rasel Ahmmad, Advocate
..... For respondent Nos.1-6

Judgment on 25.11.2025

Murad-A-Mowla Sohel, J:

This appeal is directed against the judgment and decree dated 03.07.2017 passed by the Additional District Judge, 2nd Court, Bagerhat in Title Suit No. 02 of 2009 (Probate) dismissing the suit.

Plaintiffs' case, in brief, is that 1.04 acres of land as mentioned in the schedule to the plaint was belonged to Abhiram Halder. He made a will in respect of the suit land to the plaintiff No. 1 executed and registered on 09.08.2003 and 11.08.2003 respectively. In the will plaintiff No. 2 Kakoli Halder was appointed executor. She having being appointed as the executor of the will maintained and possessed the property on behalf of her son. Testator Abhiram Halder died on 25.07.2007. After the death of the testator plaintiffs filed the application for granting probate in the Court of district delegate. The defendants raised objection against the will, hence, the suit seeking probate in the Court of District Judge, Bagerhat.

Defendant Nos. 1 and 2 contested the suit through filing written statement contending, *inter alia*, that the father of defendants Abhiram Halder was the owner of the disputed land. Apart from this land, he had no other property. The defendants are very poor and as they work in different places for their livelihood, they lived away from their father. Defendant No. 3 lived with the father, taking advantages of the old father's illness, he deceitfully created the disputed forged will in the name of his son, plaintiff No. 1. Hence, the suit would be liable to be dismissed with cost.

After considering the pleadings, the trial Court framed 3 (three) issues:

- 1) Whether the suit is maintainable in its present form and framing?
- 2) Whether the will was duly executed by the testator?
- 3) Whether the plaintiffs are entitled to get a decree of probate as prayed for?

During trial plaintiff examined 3 witnesses and produced the impugned documents as exhibit-1, death certificate of Abhiram Halder as exhibit-2 and S. A. Khatian of Bhatarabad Burirdanga mouza as exhibit-3 on the other hand contesting defendants examine 1 witness in support of their case.

After considering the entire evidence advanced by the parties, the trial Court dismissed the suit. Being aggrieved by and dissatisfied with the judgment and decree of the trial Court the plaintiffs as appellants preferred this appeal.

Mr. Bivash Chandra Biswas, learned Senior Advocate for the appellants submits that the testator had 3 sons defendant Nos. 1-3. Defendant Nos. 1 and 2 never looked after the testator. Defendant No. 3 lived with the testator and his wife (plaintiff No. 2) looked after the testator. Therefore, the testator made a will in favour of plaintiff No. 1 (son of defendant No.3) and appointed plaintiff No. 2 as executor. The signature of the testator on the will was admitted by the contesting defendants. PW2 and PW3 stated in their evidence that the testator signed in the will in their presence. However, the trial Court, having fallen into misconception of law, held that if probate was issued, the two sons of the testator (defendant No. 1 and 2) would be prejudiced, accordingly the trial Court dismissed the probate suit. If the trial Court properly perused the case record, then certainly letter of administration would have been granted in favour of the plaintiffs.

Mr. Chanchal Kumar Biswas, learned Advocate on behalf of contesting respondents submits that the testator had no property other than the disputed land. The will was executed on 09.08.2003 and registered on 11.08.2003. It is stated that the will was written on four pages on 09.08.2003, but two stamp papers used for the affidavit of the will were purchased on 10.08.2003. Since the stamps purchased on 10.08.2003 were used for a will said to have been written on 09.08.2003, this creates suspicion regarding execution of the will. Even when the plaintiff proves due execution of the will he will not be entitled to grant a probate if he failed to explain the suspicious circumstances surrounding the execution of the will. In support of his submission Mr. Chanchal Kumar Biswas

cited the case of Narendra Nath Biswas Vs Sunil Kumar Biswas reported in the 45 DLR (1993) page 567 and relied on the principle laid therein. Mr. Chanchal Kumar Biswas further submits that by depriving 2 sons executing will in favour of another son's son, injustice was done to the 2 sons, considering this the trial Court rightly dismissed the suit.

We have considered the submissions of the learned Advocates for both the sides and perused the materials on record. In support of the plaintiffs' case, they examined 3 witnesses and exhibited the will as exhibit-1, death certificate of Abhiram Halder as exhibit-2 and S. A. Khatian of the Bhatrabad Burirdanga Mouza as exhibit-3. On the other hand contesting defendants examine 1 (one) witness. Plaintiff No. 2 Kakoli Halder deposed as PW1 to support the plaint case. PW2 Bikash Chandra Mondal and PW3 Bitan Ranjan Mondal supported PW1 and identified their signatures on the impugned deed (exhibits 1/1, 1/2, 1/3). PW1 Kakoli Halder stated in the examination-in-chief, “আমার স্বশ্রু অভিরাম হালদার নালিশী জমাজমি সংক্রান্তে ০৯/০৮/২০০৩ তারিখ লিখিত ও ১১/০৮/২০০৩ তারিখে রেজিস্ট্রিকৃত উইল করিয়া যান আমার পুত্রের বরাবর। আমার স্বশ্রু উইলকারী ২৫/০৭/২০০৭ তারিখ মারা যান। নালিশী উইলটাই তাহার শেষ উইল।” She stated in cross-examination, “উইল দাতার সনাক্তকারী ছিলো বিতান রঞ্জন মন্ডল। তিনি জীবিত আছেন। তিনি আমাদের পাশের বাড়ীর। লেখক বিকাশ চন্দ্র বিশ্বাস জীবিত আছেন। উইল দাতা লেখা শেষে পড়ে দেখেন, লেখক ও তাকে পড়ে শোনান।” PW2 Bikash Chandra Mondal stated in the examination-in-chief, “আমি অভিরাম হালদারকে চিনি। বেশ আগে সে একটি উইল করে। তার নাতি বরাবর। তার ঐ উইলের মুসাবিদা আমি করিয়াছি। অভিরামের আদেশে লিখি, তাকে পড়িয়া শুনাই। তিনি আমার সামনেই স্বাক্ষর করিয়াছিলেন। ১১/০৮/২০০৩ তারিখের উইলের লেখক হিসাবে এই আমার স্বাক্ষর (প্রদর্শনী ১/১)।” He stated in cross-examination, “দাতা অভিরামের কথামতে

উইল লিখিয়াছিলাম। তাহাকে পূর্ব হইতে চিনিতাম। দাতা সুস্থ অবস্থায় মংলা এস/আর অফিসে গিয়াছিল।” PW3 Bitan Ranjan Mondal stated in the examination-in-chief, “আমি অভিরামকে চিনিতাম। সে আমার প্রতিবেশী ছিলো। সে যখন তার নাতি বরাবর একটি উইল করিয়া দেয়, তখন আমি উপস্থিত ছিলাম। দাতা অভিরাম আমার সামনে স্বাক্ষর করেন। আমি স্বাক্ষী ও সনাক্তকারী হিসাবে স্বাক্ষর করি এই আমার স্বাক্ষর (প্রদর্শনী ১/৩)”। He stated in cross-examination, “দাতার সনাক্তকারী হিসাবে আমি স্বাক্ষর করিয়াছি। ” On perusal of the aforesaid evidence of witnesses of the plaintiffs it appears that the testator went to the Mongla Sub-registry Office and put his signature on the deed of will in presence of PWs 2 and 3. On the other hand DW1 Sukumar Halder stated in the examination-in-chief, “উইলের দাতা আমার বাবা অভিরাম হালদার। উইলের গ্রহীতা তখন নাবালক ছিলো, এখনও নাবালক। নাবালক বিচিত্র হালদার এখনও জীবিত আছে। আমার পিতা নাবালক বিচিত্রকে উইল করিয়া দিয়াছে কিনা জানি না।” The defendant did not deny that his father made a will in favour of his younger brother’s son; rather, he stated that he was not aware of the matter. He does not know whether the will was made. The testimony of the witnesses of the plaintiffs prove that the will was duly executed, the testator, executor and the attesting witnesses put they signatures on it and the testator executed it in sound mind without any influence. The defendants did not deny the signature of the testator on the will. Moreover, in cross-examination DW1 admitted that the testator (his father) used to live with his younger brother (defendant No. 3), and that the younger brother and brother’s wife (plaintiff No. 2) used to take care of him.

Mr. Chanchal Kumar Biswas submitted that since two stamps were purchased on 10.8.02003 for the will said to have written on 09.08.2003 creates suspicions regarding execution of the will. In support of his

submission he cited the case of Narendra Nath Biswas Vs Sunil Kumar Biswas reported in the 45 DLR (1993) page 567. On scanning the evidence of witnesses all suspicions are dispelled, and it becomes crystal clear that the will was duly executed and registered by the testator. The allegation is mere a sort of irregularity and in no way effects the genuineness of the will. So the submission of suspicious circumstance of execution of the will as advanced by the learned Advocate for the respondents bears no substance.

The Court below misdirected in its approach of the matter in holding that by the will the other heirs have been deprived. The learned Judge failed to understand that this is a will under Hindu Law and the testator father, if wishes, can deprive every heirs by the will but dismissed the suit which is required to be interfered with by us.

In the result, the appeal is allowed. The judgment and decree passed by the trial Court is hereby set aside and the suit for granting probate is hereby decreed without any order as to cost.

Communicate this judgment and send down the lower Court records.

Bhishmadev Chakraborty, J.

I agree.