

District- Chattogram.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****First Misc. Appeal No. 368 of 2023.**Shree Kowshik Datta (Pappu),
----- Petitioner-Appellant.**-Versus-**District Delegate and Joint District Judge, 1st
Court, Chattogram.

----- Respondent.

Mr. Mintu Kumar Mondal.

----- For the Petitioner-Appellant.

Mr. Mohammad Saiful Islam.

----- For the Plaintiff-Respondent.

Heard On: 14.08.2025.**And****Judgment Delivered On: 03.11.2025.****Md. Toufiq Inam, J.**

The instant First Miscellaneous Appeal is directed against Order No. 19 dated 24.11.2020 passed by the learned District Delegate and Joint District Judge, 1st Court, Chattogram, in Probate Case No. 177 of 2018, whereby the learned Court below dismissed the probate petition as not maintainable on the ground that the will in question was not registered under the Registration Act (Amendment), 2004.

The facts essential for disposal of this appeal are that one Advocate Shamvu Nath Datta, the paternal uncle of the appellant, executed a

deed of will on 02.10.2010, duly notarized by an Advocate Commissioner, appointing the appellant, Kowshik Datta (Pappu), as the executor of the said will. The testator died on 05.04.2016. Thereafter, the appellant, being the named executor, instituted Probate Case No. 177 of 2018 under Section 276 of the Succession Act, 1925, before the learned District Delegate, Sadar, Chattogram, seeking probate of the will. The appellant was examined as a witness on 27.01.2020 and produced relevant documents. However, by the impugned order dated 24.11.2020, the learned District Delegate dismissed the petition holding it to be not maintainable on the sole ground that the will was unregistered under the amended provisions of the Registration Act.

Aggrieved by such dismissal, the appellant preferred the present First Miscellaneous Appeal.

Mr. Mintu Kumar Mondal, learned Advocate for the appellant, submits that the learned trial Court committed a clear error of law in treating non-registration of a will as a bar to maintainability of a probate proceeding. He contends that Section 17 of the Registration Act, 1908 deals with documents that are compulsorily registrable, namely non-testamentary instruments such as deeds of gift, declarations of heba, and other conveyances affecting immovable

property. A will, being a testamentary instrument, is expressly excluded from compulsory registration, and its registration is purely optional.

He further submits that Section 17B of the Registration Act applies exclusively to unregistered contracts for sale of immovable property executed prior to the introduction of Section 17A, and has no nexus with testamentary dispositions. The learned District Delegate therefore misapplied the law and dismissed the probate case on a legally untenable ground.

This Court has heard the learned Advocate for the appellant and carefully examined the impugned order and the materials on record. It appears that the learned District Delegate dismissed the probate petition solely on the ground that the will was unregistered, by erroneously invoking Section 17B of the Registration Act (Amendment), 2004. A close scrutiny of the statutory scheme makes it abundantly clear that the reasoning of the learned Court below is fundamentally misconceived. Section 17 does not include wills within the category of documents requiring compulsory registration. Section 17B pertains only to contracts for sale- documents entirely different in nature and legal effect from wills. The learned Judge clearly conflated

two distinct categories of documents and thereby arrived at an erroneous conclusion.

It is a well-settled principle that registration is not a condition precedent for the validity or admissibility of a will. An unregistered will does not carry any presumption against its genuineness, and its proof is governed by the Succession Act and the Evidence Act. What the probate Court must examine is whether the will was duly executed by the testator and attested by at least two witnesses, and whether its genuineness is satisfactorily established. By dismissing the probate petition without addressing these core issues, the learned District Delegate failed to exercise jurisdiction vested in him and committed a material irregularity warranting appellate interference.

In view of the discussions made above, and applying the settled principles of law governing testamentary instruments, this Court finds that the impugned order dated 24.11.2020 passed by the learned District Delegate and Joint District Judge, 1st Court, Chattogram, is illegal, misconceived, and wholly unsustainable in law.

Accordingly, **the appeal is allowed; the impugned order is set aside.**

The case is remanded to the Court of the learned District Delegate, Sadar, Chattogram, for fresh hearing and disposal on merit in accordance with law, upon affording due opportunity to both parties to adduce evidence.

There shall be no order as to costs.

Let the lower Court record be transmitted to the Court below at once along with a copy of this judgment for information and necessary action.

(Justice Md. Toufiq Inam)

Ashraf/ABO.