

**IN THE HIGH COURT AT CALCUTTA  
TESTAMENTARY AND INTESTATE JURISDICTION  
ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Sugato Majumdar**

**TS/3/2022**

**IN THE GOODS OF: ANIL KUMAR SEN (DEC.)**

**-AND-**

**SURAJIT SEN**

**VS**

**ABHIJIT SEN**

For the Petitioner : Mr. Shaunak Ghosh, Adv.  
Ms. Saheli Sen, Adv.  
Mr. Rajib Mullick, Adv.  
Ms. Rupjaani Sen, Adv.

Hearing concluded on : 27/04/2026

**Judgment on : 05/05/2026**

**Sugato Majumdar, J.:**

This is the Testamentary suit wherein grant of probate of the last Will and Testament of the deceased Anil Kumar Sen is prayed for.

The deceased Anil Kumar Sen was a Hindu who used to reside at 10, Crooked Lane, Kolkata-700069, P.S.-Hare Street, having last place of residence at 30, Raja Santosh Road, Kolkata-700027, who is the Testator herein. The Testator breathed his last on 23<sup>rd</sup> December, 2016 at his daughter's residence at Lake Tower, 11<sup>th</sup> floor, 87, Southern Avenue, Kolkata-700029. During his life time, the Testator executed

his last Will and Testament on 22/02/2012 which was registered with the Registrar of Assurance, Kolkata.

The Testator left behind him his wife Sumita Sen, two sons Surajit Sen and Abhijit Sen and a daughter Sujata Pyne. The mother of the Testator predeceased him.

On death of the Testator the named Executor, being the elder son filed an application praying for grant of probate. The younger son of the Testator filed caveat and contested the probate application. Since he has caveable interest, caveat was allowed and the affidavit in support of the caveat was treated as the written statement. The daughter of the Testator filed her affidavit of consent without objecting to the grant of probate. The wife of the Testator also filed her consent affidavit.

The Caveator/Defendant challenged the proceeding on the ground of substantial suspicion. It was averred that in the purported Will, the Testator appears to be highly biased and misplaced and that the Will was “full of untruth, lies and with the intent of maligning my image, reputation, totally toxic, incomprehensible, and irresponsible”. It was also stated that flat/apartment no. 503 at Niladri, supposedly given to the mother of the Defendant, was actually paid for and bought by the Testator as a wedding gift to the Defendant at his request but registered in the name of a mother. The flat no. 504 was gifted to his brother Surajit, being the Executor herein, as wedding gift, and was registered in the name of the Executor/Plaintiff's name. He also disputed the contentions and the statements made by the Testator in the Will regarding the Defendant. In fact, the written statement is rife with allegations against the Testator and the statements content of the Will. It was further stated that the Will was executed in the state unsound mind and under

influence. All other contentions in the probate application as well as the Will itself were challenged.

On the basis of rival pleadings, the following issues were framed:

1. *Whether the alleged Will dated 22<sup>nd</sup> February, 2012 is executed by the Testator, namely, Anil Kumar Sen also known as Anil Sen in accordance with law?*
2. *Whether at the time of execution of the alleged Will, the Testator was in fit state of mind or not?*
3. *Whether the Testator has executed the alleged Will without any due influence, coercion or duress from any party?*
4. *Whether the Plaintiff is entitled to get the probate as prayed for?*

On behalf of the Petitioner/Plaintiff, one of the attesting witnesses, the daughter of the Testator as well as the Executor/the Plaintiff himself were examined. The attesting witness PW-1, as well as PW-2, the daughter of the Testator, were examined as well as cross-examined. However, the Defendant did not appear subsequently and did not cross-examine PW-3, the Executor herein.

The jurisdiction of the probate court is limited. It will consider due execution of the Will in terms of Section 63 of the Indian Succession Act, 1925. Probate Court has no authority to dissect and decide on the veracity of the statements contained in the Will. A substantial part of the pleading of the Defendant is rife with allegation against the Testator which the probate Court cannot consider and look into. Testimony of PW-1 being the attesting witness stated that the Will was executed by the Testator in presence of the attesting witnesses and he was physically fit as well as mentally alert and he was not bed ridden. This witness identified the signatures of

the Testator as well as of himself. It was further stated that at the time of execution of the Will the Testator used to go to office regularly. PW-2, the daughter of the Testator corroborated the testimony of PW-1 to the extent that the Testator was physically fit and mentally alert at the time of execution of the Will. Both PWs-1 and 2 were subjected to cross-examine, as stated above, and their testimonies were consistent. PW-3, the Plaintiff himself was examined and produced the death certificate which was marked as exhibit. The Will was also marked as exhibit.

On appreciation of the testimony of witnesses, this Court is satisfied that due execution of the Will in terms of Section 63 of the Indian Succession Act, 1925 has been proved.

Let the probate be granted.

Inventory and accounts shall be filed within the statutory period.

**(Sugato Majumdar, J.)**