

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay**

F.A.T. 479 of 2017

**Sri Pranab Kumar Singha @ Manik Kumar Singha & Anr.
Versus
Somnath Majumdar (in place of Smt. Jyotsna Majumdar (since
deceased) & Ors.**

For the Appellants : Mr. Uttiya Ray,
Mr. Ambu Bindu Chakraborty,
Mr. Atish Santra.

For the Respondent no.4 : Mr. Partha Pratim Roy,
Mr. Anirban Das.

Heard on : 20.03.2026 & 08.04.2026.

Judgment on : 08.04.2026.

Rajasekhar Mantha, J.:

1. The instant first appeal is directed against the judgment and decree dated 31st May, 2017 passed by the learned District Judge, Birbhum at Suri in Misc. Probate Case No. 31 of 2013. By the said judgment, the application for Probate that was converted into a contested suit being Misc. Probate Case No. 31 of 2013, was dismissed.

2. The brief facts relevant to the case are that the one Ambjuksha Singha, had executed a holographic Will in his own handwriting on 6th November, 1986. The Will was registered on 7th November, 1986 before the Sub-Registrar at Bolpur. The application for Probate was opposed by four

daughters of the testator. The holographic Will was admittedly signed and witnessed by three persons, namely, Mathura Behari Basu, Abani Kumar Singha and Tarun Kumar Mondal. On behalf of the appellants, PW-2 was Mathura Behari Basu. His evidence is as follows:

“I knew Ambjuksha Singha. I know that the said Ambjuksha Singha had made a Will. He will bring a witness. I had also identified him. The said Will was placed before the Additional District Sub-Registrar at Bolpur on 07.11.1986. Apart from myself, Abani Kumar Singha and Tarun Kumar Mondal had also signed on the said Will as witness. A document is handed over to the witness which the witness identifies to be the said Will executed by Ambjuksha Singha. The witness identifies his signature on the Will as an attesting witness which is marked Exhibit 2. The witness identifies his signature as identifier. This is my signature as identifier which is marked Exhibit 2/1. The said Ambjuksha Singha is not alive. He has expired. I know his signature. The said executor namely, Ambjuksha Singha had signed on the Will in my presence. The said Will was written by the said Ambjuksha Singha himself. This is the said Will written by the said Ambjuksha Singha and this will bear the signature of the said Ambjuksha Singha marked Exhibit 2/2 (with objection).”

3. The learned Trial Judge after receiving evidence from both sides was of the view that PW-2 has only identified the signature of the testator. He has not signed as a witness.

4. It is also the view of the Trial Judge that the other two witnesses, namely, Abani Kumar Singha and Tarun Kumar Mondal, signatures were not identified by PW-2 as witnesses. The Trial Judge was, therefore, of the view that the Will was not properly proved in terms of Section 63(c) of the Indian Succession Act, 1925. While coming to such conclusion, the Trial Judge made reference to the decision of the Hon'ble Supreme Court of India in the case of **Janki Narayan Bhoir – Vs. – Narayan Namdeo Kadam** reported in **2003 (2) SCC 91**

5. In the said decision, the mode and manner of proof of a Will has been elucidated. In the said judgment, it is clearly mentioned that the Will can be proved by anyone of the attesting witnesses.

6. The learned Counsel for the respondent no.4 in support of the Trial Court's judgment has argued that PW-2 has only identified the signature of the testator. The same does not constitute the signature as a witness to the Will.

7. This Court is of the view that the Trial Judge has committed fundamental error in appreciating the scope of Section 63(c) of the Indian Succession Act, 1925 and the decision of the Hon'ble Supreme Court of India in the case of **Janki Narayan Bhoir** (supra). It is clear, explicit and evident from the evidence of PW-2 that he has stated that he has signed the Will as an attesting witness. He also identified the signatures of other two attesting witnesses, namely, Abani Kumar Singha and Tarun Kumar Mondal.

8. Having regard to the above and the fact that the Will is a holographic one and has been duly registered, the Trial Judge committed error in refusing the Probate of the Will in question.

9. Admittedly, handwriting and signatures of the testator have not been denied by the contesting sisters.

10. The next argument advanced by the learned Counsel for the respondent no.4 is that the testator wrote to the son-in-law dated 1st November, 1985 that he was bed-ridden and cannot move freely.

11. The said argument cannot equally be accepted as demonstrating inability of the testator to write the holographic Will or travel to the Sub-Registrar's Office with the assistance to register the same.

12. Having regard to the above, this Court is of the clear and unequivocal view that the Will dated 6th November, 1986 executed by Ambjuksha Singha warrants a Probate and is decreed as such.

13. There shall be a Probate of the Will dated 6th November, 1986 of the Ambjuksha Singha.

14. Let the appellants, namely, Pranab Kumar Singha and Amal Kumar Singha be declared as executors of the Will in question and shall be entitled to carry out the wishes of the testator.

15. Let a decree be drawn up by the Registry of this Court as expeditious as possible.

16. With the aforesaid observations, F.A.T. 479 of 2017 is allowed and disposed of.

17. There will be no order as to costs.

18. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of necessary formalities.

(Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)