
(2026) 08 CAL CK 0990

In the Calcutta High Court, Original Side

Case No : APDT/8/2026 WITH TS/23/2018, IA No.GA/1/2026, GA/2/2026

In the Goods of Rita Mukherjee Alias Chhanda Mukherjee
(Deceased): Paramita Mukherjee

APPELLANT

Vs

Susmita Pal

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Citation : 2026:CHC-OS:342-DB

Hon'ble Judges : Debangsu Basak, J.;Md. Shabbar Rashidi, J.

Bench : Division Bench

Advocate : For the Appellant: Mr. Gunjan Shah, Adv.; Ms. Shreya Agarwal, Adv.
For the Respondent: Mr. Aniruddha Mitra, Sr. Adv.

Final Decision : Dismissed

Judgement

DEBANGSU BASAK, J.: -

1. IA No.GA/1/2026 is an application for condonation of delay.
2. Appeal is directed against the impugned judgment and order dated September 24, 2025.
3. By the impugned judgment and decree, the learned Trial Judge granted probate of the registered Will of the testatrix dated December 19, 2009.
4. Apparently there is a delay of 150 days in making and preferring the appeal.
5. Learned Advocate appearing for the respondent does not object to the condonation of delay.
6. In such circumstances, the delay in making and filing the appeal is condoned and IA No.GA/1/2026 is disposed of.
7. By consent of the parties, the appeal is taken up for final hearing.
8. Learned Advocate appearing for the appellant submits that, the appellant is

the daughter of the testatrix. He submits that, the testatrix died intestate on November 5, 2016 leaving behind her surviving the appellant as her daughter and the respondent as her son. He submits that, the appellant married sometime in 2007-2008. Subsequent to her marriage, she was separated from the family. Although the appellant was separated, the appellant kept contact with the testatrix through telephone.

9. Learned Advocate appearing for the appellant submits that, the appellant was not permitted to visit the testatrix by the respondent. However, the appellant kept contact with the testatrix over telephone.

10. Learned Advocate appearing for the appellant submits that, the father of the appellant expired on January 13, 2009. The Will is claimed to be executed and registered on December 19, 2009. He submits that, the death of the father of the appellant who was the husband of the testatrix took a toll on the mental capacity of the testatrix.

11. Learned Advocate appearing for the appellant submits that, there are suspicious circumstances surrounding the execution of the purported Will. He submits that, the respondent is a police personnel. Respondent prevailed over the testatrix in order to execute the purported Will.

12. Learned Advocate appearing for the appellant draws the attention of the Court to the timeline with regard to the execution of the purported Will. He submits that, P.W.-1 in his deposition stated that the Will was executed at 9:00 am. at Madhyamgram while P.W.-2 who is an advocate and claimed to be the scribe of the Will stated that the execution of the Will took place at Madhyamgram at about 10:20 -10:25 am. He refers to the document of registration of the purported Will and, in particular, to the timeline given therein. He submits that, according to the timeline of the registration office, Will was executed at 11:50 am. He contends that, it is impossible for a person of advanced age as that of the testatrix, to travel from Madhyamgram to the Registry Office at Kolkata to register the Will after executing the same at 10:30 am. at Madhyamgram and present such document for registration at 11:50 am. at Kolkata.

13. Learned Advocate appearing for the appellant draws the attention of the Court to the deposition of P.W.-1 and P.W.-2. He submits that, deposition of P.W.-1 and P.W.-2 raises, and in fact, establishes the suspicious circumstance relating to the execution of the purported Will. He submits that, P.W.-2 who is an advocate and claimed to be the scribe of the Will could not testify at the trial.

14. Learned Advocate appearing for the respondent submits that, the Will was executed at Madhyamgram. The advocate who is the scribe of the Will was present at the time of execution. He refers to the deposition of P.W.-2 who is the scribe of the Will. He submits that, the testatrix along with P.W.-2 who is the scribe of the Will came from Madhyamgram to Kolkata registration office by way of taxi. He points out that, the year of execution and registration of the Will is

2009 when the traffic congestion was not as much as it is presently obtaining in the city of Kolkata and that it was a Saturday.

15. Concerned Will was registered in Kolkata on December 19, 2009. Will was tendered for registration as will appear from the document of the registration office on December 19, 2009 at 11:50 am.

16. Attesting witness being P.W.-1 duly proved the execution of the Will by the testatrix at Madhyamgram. He stated in his evidence that, the executrix signed the Will first and thereafter the attesting witnesses signed in presence of the testatrix and in each other's presence. P.W.-1, the attesting witness pegged the time of execution at 9:00 am. at Madhyamgram.

17. P.W.-2 who is the scribe of the Will stated that, the Will was executed at around 10:20-10:25 am. at Madhyamgram. He stated that he was at the residence of the testatrix at Madhyamgram at 9:00 am. P.W.-2 stated that, after execution of the Will, he took the executrix along with the original Will in a taxi from Madhyamgram to Kolkata and reached the registration office at around 11:00 am. He stated that, his clerk was present at the registration office who made necessary arrangements for presentation of the Will.

18. The Will was presented for registration on December 19, 2009 at 11 am at the Registration office at Kolkata.

19. From the narration of events of P.W.-1 and P.W.-2, we are not in a position to arrive at a conclusion finding that, suspicious circumstances encompass the execution of the Will by the testatrix. Due and valid execution of the Will by the testatrix was established by P.W.-1. P.W.-1 and P.W.-2 corroborated each other. Timeline stated by P.W.-1 and P.W.-2 as appearing from the registration document itself, do not conflict each other in any material form so as to allow an inference of suspicious circumstances attending the execution of the Will on the basis of the timeline itself.

20. That the testatrix was suffering from any mental health condition or was incapable of understanding the purport of the Will executed by her or that there was any coercion or undue influence exerted upon the testatrix for her to execute the Will is not established at the trial. Mere fact that the testatrix was living with the respondent does not permit an inference of the respondent exerted any undue influence or coercion upon the testatrix to execute the Will. It is admitted by the appellant that she was not in physical contact with the testatrix. She was in contact with her over telephone.

21. Attention of the Court was drawn to the deposition of P.W.-1 with regard to exclusion of the appellant from the bequeath of the immovable property and the estate of the testatrix. With respect, we are not in a position to subscribe to the view that simplicitor on the ground that the testatrix chose not to bequeath any of her estate to the appellant, the Will was executed under suspicious circumstances or by coercion or undue influence. Deposition of P.W.-1 in this

respect is an understanding of the conversation which he claims that he entered into with the testatrix with regard to the contents of the Will. It is trite law that the probate court is not required to sit in appeal over the judgment of the testator or the testatrix with regard to the bequeath of their estate.

22. Learned Trial Judge noted the rival contentions of the parties. Learned Trial Judge tabulated the timeline of execution of the Will as stated by the different witnesses and arrived at a find that there was no suspicious circumstances involved in the execution of the Will.

23. In such circumstances, we find no ground to interfere with the impugned judgment and decree dated September 24, 2025.

24. Accordingly, APDT/8/2026 along with GA/2/2026 are dismissed, without any order as to costs.

OPINION OF MD. SHABBAR RASHIDI, J.

25. I agree.