

**IN THE COURT OF THE DISTRICT JUDE, DIBRUGARH**

**Misc. (Probate) Case No. 1 of 2022**

- (1) Sri Raj Kumar Haldar,  
S/o- Late Nihar Ranjan Haldar &  
Smt. Swapna Haldar,  
R/o- KP Road, Dibrugarh Town, PO, PS & District- Dibrugarh, Assam.  
... .. Petitioner.

-Vs-

- (1) Smt. Swapna Haldar,  
W/o- Late Nihar Ranjan Haldar,  
D/o- Late Nagendra Nath Dutta,  
R/o- KP Road, Dibrugarh Town, PO, PS & District- Dibrugarh, Assam.
- (2) Sri Uttam Kumar Haldar,  
S/o- Late Upendra Nath Halder,  
R/o- 21D, Nirupama Enclave, Block (B),  
Beltola, Guwahati-781028.  
.....Opposite parties

Advocate for the Petitioner: Sri Raktim Bhattacharyya.

Date of Evidence : 18-04-2022.

Date of Order : 20-04-2022.

**ORDER**

1. This probate petition/case under Section 276 of the Indian Succession Act, 1925 has been filed by the petitioner Sri Raj Kumar Haldar, praying for grant of Probate Certificate in his favour in respect of the WILL of the deceased Late Chabi Rani Halder, (W/o- Late Niranjan Halder, D/o- Late Upendra Nath Halder, R/o- KP Road, Dibrugarh Town, PO, PS & District- Dibrugarh, Assam.

2. Brief facts as emerging from the petition, is that during her life time, Chabi Rani Halder executed her Last Will and Testament on 12-11-2019, wherein she bequeathed the properties described in the schedule to the petition to her nephew Sri Raj Kumar Halder (petitioner in the instant case), as she was issueless widow and used to reside with Smt. Swapna Halder (OP No. 1 in the instant case), the petitioner and Debasish

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Halder, both sons of Nihar Ranjan Halder. Debasish Halder, a bachelor, expired on 18-12-2021. It has been further stated that Chabi Rani Halder expired on 16-09-2021 leaving behind Sri Uttam Kumar Halder, Smt. Swapna Halder and Sri Raj Kumar Halder as her legal heirs.

3. It has also been stated that Niranjan Halder, husband of Chabi Rani Halder expired in the year 2006 and her parents expired long ago; that Chabi Rani Halder and Niranjan Halder were issueless and after the death of Niranjan Halder, the petitioner used to look after Chabi Rani Halder; that Chabi Rani Halder during her lifetime used to reside with the family of the petitioner, Smt. Swapna Halder (OP No. 1), Debasish Halder (since deceased); that her brother Sri Uttam Halder @ Uttam Kumar Halder after superannuation from service is presently residing at Guwahati.

4. It has been further stated that the petitioner was appointed as executor as well as beneficiary of the Last WILL and Testament of the deceased Testatrix Late Chabi Rani Halder and as such, the petitioner being the executor and beneficiary has filed the instant petition for probate.

5. Notices were issued. None appeared to file objection.

6. The present petition is supported by verification of one of the attesting witnesses namely, Sri Ashim Dutta, wherein it has been declared that he was present on 12-11-2019 at the time of execution of the WILL and had seen the testator affix her signatures on the WILL and he too signed on the WILL as attesting witness.

7. The petitioner in support of his case filed Evidence-on-Affidavit and adduced evidence of three other witnesses. The petitioner, in his evidence on affidavit, reiterating the facts narrated hereinbefore, has exhibited the original WILL as Ext 1, signatures of Testator Late Chabi Rani Halder on the WILL as Ext. 1(1) to Ext. 1(5), signature of witness Sri Uttam Kumar Halder on the WILL as Ext. 1(6), signature of witness Sri Ashim Dutta on the WILL as Ext. 1(7), signature of Sri David Kr. Roy on the WILL as Ext. 1(8), signature of Sri Arabinda Goswami on the WILL as Ext. 1(9), Death Certificate of Late Chabi Rani Halder as Ext 2, Death Certificate of Late Debasish Halder as Ext. 3.

8. Petitioner's witness No. 2 (Ashim Dutta), 3 (David Kr. Roy) and 4 (Arabinda Goswami), the attesting witnesses No. 2, 3 and 4 to the WILL dated 12-11-2019 have

filed evidence on affidavit stating inter alia, that they knew Late Chabi Rani Halder, who prior to her death had, on 12-11-2019 made the WILL (Ext. 1). It has been stated that the said WILL was executed by the said testator in their presence (presence of Sri Uttam Kumar Halder, Sri Ashim Dutta, Sri David Kr. Roy and Sri Arabinda Goswami). Petitioner witness No. 2, 3 and 4 have exhibited the WILL as Ext 1, the signatures of Testator as Ext. 1(1) to Ext. 1(5), which petitioner witnesses No. 2, 3 and 4 have stated were done in their presence; Ext. 1(7), Ext. 1(8) and Ext. 1(9), being their signatures respectively, as attesting witnesses.

9. From perusal of the evidence on record, it is seen that Testator had executed a WILL on 12-11-2019. By the said WILL, the petitioner has been made the sole Executor of the WILL.

10. Having narrated the materials on record, it would be beneficial to reproduce Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872 which deal with the proof of execution of documents required by law to be attested.


*"Section 63. Execution of unprivileged wills :- The Will shall be attested by two or more witnesses, each of whom has seen the testator sign, or affix his mark to the Will or has seen some other person sign the Will, in the presence by direction of the testator or has received from the testator a personal acknowledgement of his signature or mark, or the signature of the such other person and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.*

*Section 68 Proof of execution of document required by law to be attested:- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court capable of giving evidence:*

*[provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provision of the Indian Registration Act, 1908 ( 16 of 1908) unless its execution by the person by whom it purports to have been executed is specifically denied.]"*

11. According to the aforesaid two sections, if a document is required to be attested by law then it shall not be deemed to have been proved until one of the attesting witnesses has been called for the purpose of proving the said document, if the attesting witnesses are alive.

12. The petitioner, in the instant case, in order to prove the Will has to establish that (i) the WILL dated 12-11-2019 is the last WILL of the deceased namely, Late Chabi Rani Halder and that (ii) the said WILL was signed by her in the presence of the attesting witnesses namely, Sri Ashim Dutta (PW-2), Sri David Kumar Roy (PW-3) and Sri Arabinda Goswami (PW-4) or that they have received from the testator, personal acknowledgement that she has put her signature or mark on the same.
13. The petitioner in order to prove the WILL has examined the attesting witnesses namely, Sri Ashim Dutta as PW-2, Sri David Kumar Roy as PW-3 and Sri Arabinda Goswami as PW-4. It has been stated that the deceased/testator namely, Late Chabi Rani Halder had signed the WILL (Ext. 1) in their presence and after they put their signatures, she signed on the Will [their signatures being Ext 1(7) to Ext. 1(9). From Ext. 1, it is also seen that PW-2, PW-3 and PW-4 were present along with the testator and other attesting witness and all signed on the WILL simultaneously.
14. The well settled principle of law is that one who propounds a WILL must establish the competence of the testator to make the WILL at the time of execution of the same. From the evidence of attesting witnesses of the WILL namely, Sri Ashim Dutta (PW-2), Sri David Kumar Roy (PW-3) and Sri Arabinda Goswami (PW-4), it is established that the testator very well knew the contents of the WILL and she was in sound disposing capacity at the time of executing the same.
15. In the ultimate analysis, it is seen from the evidence of PW-2, PW-3 and PW-4 that there is no dispute in the execution of the WILL by Chabi Rani Halder and no other WILL was executed by the testator subsequent to the WILL dated 12-11-2019.
16. Therefore, in the instant case, the propounder of the WILL has discharged his burden by showing that the WILL was signed by the testator and at the time of execution of the WILL, the testator was in a sound disposing mind and knowing well the nature and effect of the disposition she had put her signatures on the testament out of her own free WILL in presence of attesting witnesses/PW-2, PW-3 and PW-4, who attested in their presence and in the presence of others.
17. Thus, from the above observation it is seen that Late Chabi Rani Halder duly executed the WILL dated 12-11-2019 while she was in a sound and disposing state of mind and it was duly attested in accordance with law and he executed the same with free will

  
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and without any coercion or undue influence. Petitioner is therefore entitled to be granted probate of the WILL dated 12-11-2019 executed by Late Chabi Rani Halder.

### ORDER

18. In the result, the instant Misc (Probate) is allowed.
19. Issue Probate of WILL marked as Ext. 1 in respect of the property which is fully described in schedule to the petition (and as given herein below) in favour of the petitioners namely, Sri Raj Kumar Halder subject to the deposit of requisite court-fee.

Schedule to the Petition:-

### Schedule

A plot of land (Class of Land 3<sup>rd</sup> Class Basti) measuring 0B-0K-8 48/144 Ls {i.e., 60 feet (east-west) X 20 feet (north-south) or 1200 square feet} of Periodic Patta No. 38 Covered by part of Dag No. 679 of New Amolapatty Ward, Mouja & District Dibrugarh along with the Assam Type House standing thereon bearing Municipal Holding No. 194, Ward No 13 of Dibrugarh Municipality situated at KP Road, Dibrugarh Town, PO, PS & District- Dibrugarh, Assam which is bounded and butted by:

On the North: Land & House of Sri Jagadish Bhowmick

On the South: Land & House of Smt. Swapna Halder

On the East: KP Road

On the West: Land & house of Nikhil Malakar/Gouranga Malakar.

20. The original WILL marked as Ext. 1 be returned for keeping the same in the safe custody of the office of the District Judge, Dibrugarh.
21. Issue a probate certificate in favour of the petitioner on payment of requisite Court fee and on execution of an indemnity bond.

Given under my hand and seal of this Court, on this 20<sup>th</sup> day of April, 2022 at Dibrugarh.

*Handwritten signature*  
District Judge  
Dibrugarh

*Received  
back one  
sealed cover  
envelope.  
22/4/22*