

IN THE COURT OF DISTRICT JUDGE :::: MORIGAON.

Misc. (Probate) No. 01/2019

**PRESENT : Mr. P. Das,
District Judge,
Morigaon.**

Smt. Champa Saikia

.....Plaintiffs/Petitioners.

VS

- i) Sri Nabin Saikia
- ii) Smt Rekha Saikia
- iii) Smt. Hemalata Saikia
- iv) Smt. Sashiprabha Saikia

.....Respondents.

Advocate for the petitioner/respondents : Mr. R.M. Barua and Mr. P.K.
Chandra, Ld. Advocates.

Date of hearing : 02.09.2019

Date of Order : 04.10.2019.

ORDER

1) The instant petition/application has been filed U/s 276 of the Indian Succession Act, 1925 by the petitioner Smt Champa Saikia seeking probate with regard to WILL stated to be made by her father Lt. Akan Saikia @ Akan Chandra Saikia with regard to the property described in the Schedule A. The four respondents namely, Sri Nabin Saikia, Smt Rekha Saikia, Smt. Hemlata Saikia, Smt. Sashiprabha Saikia are stated to be the brother and sisters of the petitioner respectively. It is stated that the wife of the deceased Amoya Saikia has already passed away.

2) General notices were duly issued and served. Upon issuance of specific notices, the respondents appeared. None has appeared to oppose this petition for probate.

3) The petitioner Champa Saikia has adduced evidence on affidavit and exhibited some documents. One Prabin Saikia and the respondent No.1 Sri Nabin Saikia stated to be the brother of the petitioner has also adduced evidence on affidavit.

4) The petitioner in her evidence has stated that her father Lt. Akan Saikia @ Akan Chandra Saikia expired on 18.10.2017 at his residence situated at village Sidhabari under Morigaon PS, in the district of Morigaon and he left behind the petitioner and her siblings namely, Sri Nabin Saikia, Smt Rekha Saikia, Smt. Hemlata Saikia, Smt. Sashiprabha Saikia. It is stated that her mother has already passed away and that the petitioner is the eldest child of the deceased. She further stated in her evidence that during his lifetime, he executed a WILL being WILL deed No. 1164 dated 17.07.2010 at the Office of the Sub-Registrar, Morigaon whereby, the property in the form of land described in the Schedule A (1) to this petition and Schedule A of the WILL bequeathed in her name. She also stated that as her property was destroyed by erosion of Brahmaputra River, her father made this WILL in her favour and also in the context of the fact that all her siblings have been settled. The property which is the subject matter to WILL comprises of land measuring 2kathas 10 lessas, covered by PP No.45, Dag No.385 under Ghuramara Pather Kissam of Morigaon Mouza in the district of Morigaon. The said **WILL** has been exhibited as **Ext. 1** and **Ext.1 (1) and 1(2)** are the **signatures** of the Testator Akan Saikia @ Akan Chandra Saikia. The **Death Certificate** of the Testator Akan Saikia @ Akan Chandra Saikia has been exhibited as **Ext.2**. The **School Certificate** of the petitioner Champa Saikia has been exhibited as **Ext.3**.

5) Sri Nabin Saikia in his evidence on affidavit has stated that he is the son of the Testator and that his father had made the concerned WILL in favour of his elder sister Champa Saikia with regard to the Schedule land and that he was present at the time of execution of the said WILL and he has signed on it as an attesting witness. The signature has been exhibited as Ext.1 (3).

6) Sri Prabin Saikia has also filed evidence on affidavit stating that he knew the Testator and that he made the concerned WILL in favour of his daughter Champa Saikia and that he was present at the time of execution of the WILL and put his signature on it as an attesting witness and the said signature has been exhibited as Ext. 1 (4).

7) It is stated in the petitioner evidence that the WILL in question is the last WILL and there is no impediment towards granting the probate with regard to the said WILL.

8) From the aforesaid materials on record, none of the respondents have raised any objection with regard to grant of probate with regard to the said WILL in favor of the petitioner. I also find on the basis of evidence and materials on record that the WILL in question was duly executed and there are no suspicious circumstances surrounding the WILL.

9) In the above facts and circumstances, I am of the considered view that that the instant petition of probate has merit and should be allowed and accordingly, allowing the petition, the petitioner Smt Champa Saikia may be granted a probate of WILL i.e. WILL deed No. 1164 dated

17.07.2010 made in the name of the petitioner by her father Lt. Akan Saikia @ Akan Chandra Saikia with regard to the property described in Schedule A to the probate petition and in the WILL.

10) The petitioner shall furnish valuation certificate of the properties pertaining to the WILL from the concerned revenue authority for payment of Court fees.

11) Issue a Probate Certificate accordingly. The Original WILL shall be returned to the custody of office of the Sub-Registrar, Morigaon after issuance of Probate Certificate. The original WILL shall be kept by the Office of the Sub-Registrar, Morigaon for further reference.

Given under my hand & seal of this Court on this 04th day of October, 2019.

Dictated and corrected by me

(P Das)
District Judge, Morigaon

(P Das)
District Judge, Morigaon