

**IN THE COURT OF THE DISTRICT JUDGE, SONITPUR,  
TEZPUR.**

**Misc.( Probate) Case No..**     :-   **123 of 2012**

**Present**                                 :   **Mridul Kumar Kalita, AJS**  
District Judge, Sonitpur  
Tezpur

**Petitioner**                             :- Smti Mausumi Baruah ,  
W/O Sri Rimanka Baruah  
D/O Late Arun Chandra Baruah  
Tezpur town, Mouza-  
Mahabhairab,  
PO & PS – Tezpur  
Dist. Sonitpur (Assam)

Counsel for the Petitioner         : Sri T.K. Maitra,Advocate  
Counsel for Opposite Party       : Nil

Date of hearing                         : 7/05/2015

Date of Judgment                      : 18/05/2015

**J U D G M E N T**  
**&**  
**ORDER.**

**1.** The petitioner Smti Mausumi Baruah has filed this instant petition under Section 276 of the Indian Succession Act, 1925 seeking an order from this Court for granting of Probate of the Last WILL dated 20-02-2012 of the deceased testator Arun Chandra Baruah.

**2.** The facts relevant for considering the instant application, under Section 276 of the Indian Succession Act, 1925 , are as follows:-

(i) The petitioner is the daughter of deceased Arun Chandra Baruah and he was the permanent resident of PNGB Road, Kolibari, Tezpur Town, Mouza- Mahabhairab, PO & PS – Tezpur, District – Sonitpur (Assam).

(ii) that Sri Arun Ch. Baruah died on 30-08-2012 at his Tezpur residence and the deceased Arun Ch. Baruah had immovable property at PNGB Road, Kolibari, Tezpur Town, Mouza- Mahabhairab, PO & PS – Tezpur, District – Sonitpur (Assam) within the jurisdiction of this court and also had immovable properties at village Balichapori, Mouza - Hatigarh; at village Gharpholia, Mouza - Hatigarh; at village Choutang, Mouza - Hatigarh; at village Buragaon, Mouza - Hatigarh; at village Kotohabariya, Mouza - Charigaon ; at village Phukanar Khat, Mouza – Chowkhat; at village Chamar, Mouza – Hatigarh; at village No.2 Gharphalia, Mouza – Hatigarh and at village No.1 Gharphalia, Mouza – Hatigarh – all district of Jorhat, Assam. The deceased had also private Car Hyundai Accent AS-01-S/37771 at Tezpur residence. And those are the assets likely to the hands of the petitioner upon death of her father.

(iii) At the time of his death, he had left behind the legal heirs, namely, Smti Mausumi Baruah (daughter/petitioner) and Sri Saurav Kaushik Baruah (son).

(iv) Before his death, the said testator Sri Tarun Chandra Baruah executed his Last Will and Testament dated 20-02-2012 at Tezpur in presence of two witnesses, namely, Sri Kshitish Chandra Singh and Sri Munindra Kumar Baruah and the said WILL executed by the testator in his sound health, mind, free will and consent and without any fraud, coercion or undue influence from any person.

(v) That the testator Late Tarun Chandra Baruah divested and bequeathed all his immovable properties of Tezpur town and in Jorhat District and his personal car to his daughter Mausumi Baruah under his said Last WILL dated 20-02-2012 as the sole beneficiary under the WILL as the son of the testator is a person of absolutely of unsound mind and is unable to administer the properties of the testator and unable to persecute any works properly and to maintain himself.

(vi) that the petitioner is the sole legatee and beneficiary of all the properties of the deceased testator and is capable of managing and administering his properties and assets in proper manner, therefore, the

testator appointed the petitioner as the sole executor of the Will and desired that the petitioner executor would provide his son with food, clothing, lodging and required medical facilities at the testator's Tezpur residence from the income of the properties and assets left by the testator upon his death.

**3.** On registration of this Misc.(P) Case, notices were hanged in the Notice Board of District Judge, Sonitpur, Tezpur, Notice Board of Deputy Commissioner, Sonitpur at Tezpur and Notice Board of Mouzadar of Mahabhairab Mouza. Notice was also issued for affixation at the last residence of Late Arun Ch. Baruah, father of the petitioner. All the notices were duly served/ affixed.

**4.** The petitioner Smti Mausumi Baruah, submitted her evidence-on-affidavit reiterating the facts stated in the application for probate. The petitioner has also exhibited the original WILL as Ext.1, Death Certificate of Arun Chanda Baruah (father) as Ext. 2 and Death certificate of her mother Kalpana Baruah.

**5.** The petitioner also adduced the evidence of the attesting witness Sri Kshitish Chandra Singha as P.W.-2, wherein, he has stated that late Arun Chandra Baruah executed his last will and testament on 20/02/2012 in his presence as well as one another person namely Sri Munindra Kumar Baruah. He has also exhibited the will as Exhibit 1 and the signature of the deceased Arun Chandra Baruah as Ext.1 (1), 1(2), 1 (3) & 1 (4). He has also deposed that the last will of the testator was executed in his sound health and mind out of his free will and consent, without any fraud, coercion or under influence in full capacity of understanding.

No one has contested the claim of the petitioner.

**6.** I have heard the learned counsel for the petitioner. Section 68 of the Indian Evidence Act deals with the proof of the execution of the

document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. In the instant case, PW-2 is the attesting witness and he has proved that late Arun Chandra Baruah executed his last will and testament on 20/02/2012 in his presence.

**7.** Considering the uncontroverted testimonies of P.W.-1 i.e. the petitioner Smti Mausumi Baruah & P.W.-2 i.e. the attesting witness Sri Kshitish Chandra Singha as well as considering the exhibited documents (Ext.-1 to Ext.3), I am of the considered opinion that the testator namely, late Arun Chandra Baruah, on 20/02/2012 executed a WILL bequeathing all his immovable properties, as described in schedule to the petition U/s 226 of Indian Succession Act, to his only daughter Smti Mausumi Baruah, who is the petitioner in this case. The sole beneficiary Smti Mausumi Baruah has also been appointed as the sole executor of the WILL. There is no material, on record to raise any kind of suspicion about the genuineness of the WILL or due execution of the WILL. Hence, it is hereby declared that the WILL dated 20/02/2012, which is exhibited as Ext. 1 in this case is the last WILL of Late Arun Chandra Baruah and same was duly executed. The petitioner being the sole beneficiary as well as appointed executor of the WILL is entitled to get Probate for the aforesaid WILL subject to payment of due court fees on the present market value of the property likely to come to the hands of the petitioner, who is the sole beneficiary of the WILL. The petitioner is directed to obtain present valuation of the properties from the concerned Govt. Authorities for determination of Court fees to be paid.

**8.** Issue Probate accordingly on getting the valuation Certificate and due Court fee as per the provisions of the Court Fee Act.

**9.** The original WILL shall be kept in the safe custody of the Office of the District Judge, Sonitpur, Tezpur forever.

**10.** This Case is disposed of without contest.

**11.** Given under my hand and seal of this Court on this 18<sup>th</sup> day of May, 2015.

(M.K. Kalita )  
District Judge,  
Sonitpur :: Tezpur.

Dictated and corrected by me.

(M.K. Kalita )  
District Judge,  
Sonitpur :: Tezpur.

Typed by me.

(R. Hazarika)  
Steno.