

Civil Appeal

**Present: The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Prasenjit Mandal**

Judgment on: 8th April, 2010.

F.A. Nos. 291-292 of 2008

Re: An Application for Injunction being C.A.N. 6016 of 2008

Mr. Arunanshu Chakraborty

Versus

Mr. Manish Kumar Mukherjee

POINTS:

INJUNCTION-Probate appeal pending-Money taken from third parties before filing application for injunction-Court whether direct to deposit the money in Court- Injunction whether be granted- Code of Civil Procedure, 1980 O39 R 1&2

FACTS:

By this application the applicant has prayed for an order of injunction restraining the appellant from taking money out of the alleged illegal contract made in respect of the property which does not belong to the appellant and to return the money taken by him with bank interest and to deposit the same in a nationalised bank and also restraining him from encroaching upon the property of the testator situated in Salt Lake.

HELD:

The Court finds substance in the contention of the petitioner that the appellant should be during the pendency of these appeals restrained from entering into any contract with respect to the property which is the subject-matter of these appeals and should also be restrained from transferring,

encumbering or dealing with the same or changing the nature and character of the property till the disposal of these two appeals. Within the scope of these appeals which are Probate Appeals, the Court is not inclined to enter into the question of acceptance of the amount of money allegedly taken by appellant from the third parties before filing of this application in the absence of those third parties to these proceedings. The petitioner will, however, be at liberty to seek for his appropriate remedy before appropriate forum in this regards in accordance with law. Para-5

For the Applicant:

Mr. Arunanshu Chakraborty
In-person

For the Respondent:

Mr. Saptangshu Basu.

THE COURT:

C.A.N. 6016 of 2008.

1) By this application the applicant, in-person, has prayed for an order of injunction restraining the appellant from taking money out of the alleged illegal contract made in respect of the property which does not belong to the appellant and to return the money taken by him with bank interest and to deposit the same in a nationalised bank and also restraining him from encroaching upon the property of the testator situated in Salt Lake.

2) These two appeals have been preferred, one against an order granting probate and the other, rejecting an application for revocation of probate. According to the applicant, late Amiya Bhushan Banerjee, the testator, executed his last Will and Testament on 1st July, 2003 by cancelling all previous wills and that the testator appointed respondent/petitioner and/or Manish Mukherjee, the appellant, as executor for taking probate of the said Will dated 1st July, 2003. According to the

respondent, as the said Manish Mukherjee refused to take probate, he applied for probate and learned District Delegate, Barasat, granted probate on the said Will on 12th March, 2007. After the grant of the said probate, Manish Mukherjee filed an application for revocation of the said probate on the ground of non-citation. However, the learned District Judge dismissed the said petition.

3) According to the respondent, the appellant and his wife applied for probate on 3rd July, 2007 of other two Wills allegedly executed by the testator on 18th October, 2003 which were on the face of those forged. By those two Wills, the testator allegedly appointed Manish Mukherjee as executor and so-called beneficiary regarding the first floor of GD-10, Sector-III, Salt Lake and his wife is the executrix and so-called beneficiary of the backside of the second floor of the said premises. According to the terms of the said Will dated 18th October, 2003, the appellant had no power to administer any other estate and he was entitled to make addition and alteration of those properties without causing any damage to the other portion of the adjoining property. The applicant submitted that the appellant and his wife illegally entered into an agreement with one Tata Teleservices Ltd. for installation of tower on the roof top of the building where the appellant has no right and the said agreement was executed on 30th June, 2004 first claiming as the co-owner of the building and thereafter, as the tenant. The applicant, thus, prayed for the relief as mentioned above.

4) In course of hearing of this application, the applicant contended that in view of the provisions contained in West Bengal Government Land (Regulation of Transfer) Act, 1993, the interest of a lessee in a property in Salt Lake cannot be transferred by way of Will in favour of any third party who is not an heir of such a lessee but ultimately did not press this point.

5) After hearing the learned counsel for the parties and after taking into consideration the fact that at this stage the appellant being dissatisfied with the grant of probate in favour of the petitioner and rejection of his application for revocation of grant of probate has preferred these two appeals we find substance in the contention of the petitioner that the appellant should be during the pendency of these appeals restrained from entering into any contract with respect to the property which is the subject-matter of these appeals and should also be restrained from transferring, encumbering or dealing with the same or changing the nature and character of the property till the disposal of these two appeals. Within the scope of these appeals which are Probate Appeals, we are not inclined to enter into the question of acceptance of the amount of money allegedly taken by appellant from the third parties before filing of this application in the absence of those third parties to these proceedings. The petitioner will, however, be at liberty to seek for his appropriate remedy before appropriate forum in this regards in accordance with law.

6) The application is, thus, disposed of in terms of the order mentioned in the above paragraph.

7) In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.)

I agree.

(Prasenjit Mandal, J.)