

**Appellant Vs. Respondent**

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**SooperKanoon Citation :** [sooperkanoon.com/1059044](http://sooperkanoon.com/1059044)

**Court :** Kolkata

**Decided On :** Feb-21-2013

**Judge :** I. P. Mukerji

**Appellant :** Appellant

**Respondent :** Respondent

**Judgement :**

ORDER

SHEET SHEET NO.1 PLA No.88 of 2012 GA No.2679 of 2012 GA No.3234 of 2012 IN THE HIGH COURT AT CALCUTTA Testamentary & Intestate Jurisdiction ORIGINAL SIDE IN THE GOODS OF:ABHA RANI SINHA BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date :

21. t February, 2013.

Appearance:Mr.Pratap Chatterjee, Sr.Advocate, Mr.Samrat Sen, Advocate, Ms.H.Chakraborty, Advocate, Mr.Paritosh Sinha, Advocate with Mr.Joydeep Roy, Advocate..for the petitioner.

Mr.S.B.Mookherjee, Sr.Advocate, Mr.Sudipto Sarkar, Sr.Advocate, Mr.Sabyasachi Chowdhury, Advocate with Mr.Rajarshi Dutta, Advocate..for the Respondents.

Mr.Debasis Nandi, Advocate..for Anjan Chakraborty.

The Court :-Both the applications were returnable today.

G.A.No.2679 of 2012 is made by Dr.

Bikash Sinha.

GA No.3234 of 2012 is made by Mrs.Mary Catherine Sinha.

One of the executors of the Will of late Abha Rani Sinha, Anjan Chakraborty made an application in the above probate proceedings, being GA No.998 of 2012, asking for an order restraining the other Joint Administrator, the daughter-in-law of the deceased, Mrs.Mary Catherine Sinha from making withdrawal from the bank accounts/term deposits of which Abha Rani Sinha was a joint holder.

On 10th May, 2012, on this application I passed an order restraining Mrs.Mary Catherine Sinha from making any withdrawal.

On 11th June, 2012 I varied the above order and disposed of the application by permitting Mrs.Mary Catherine Sinha to deal with the bank accounts/term deposits where her name appeared first.

Then, sometime in the beginning of this year Dr.

Bikash Sinha claiming himself to be a legatee under the will moved the application (GA No.2679 of 2012).asking for an order imposing a ban or a ceiling on Mrs.Mary Catherine Sinhas withdrawals.

Mary also made an application [GA No.3234 of 2012].for liberty to operate the bank accounts and deal with the term deposits.

These applications were considered together on 3rd January, 2013 when an order was made by me restricting the right of Mary to make any withdrawal in excess of Rs.10 lakhs, with prospective effect.

It appears that one of the legatees of the Will of Abha Rani Sinha, Dr.

Bikash Sinha and the Joint Executor Mr.Anjan Chakraborty are on one side and Mary on the other.

Mary is a woman of British origin who was married to the son of the testatrix Adhish Chandra, who predeceased the testatrix.

She is not only the joint Executor but also a very substantial legatee under the Will of her mother-in-law.

But there are allegations against her by these two persons of misappropriation of funds after the death of her mother-in-law.

The Court is concerned not with the passing of some orders for interim protection of the estate.

Abha Rani Sinha had bank accounts/terms deposits where she and Mary were joint holders but her name appeared as the fiRs.account holder.

There were other bank accounts/term deposits which were similarly joint but where Marys name appeared as the fiRs.account holder.

Mr.S.B.Mookherjee, learned senior advocate appearing for Mrs.Mary Catherine Sinha handed up to this court tables consisting of three sheets.

The fiRs.sheet related to the bank accounts/term deposits of which Abha Rani Sinha was the fiRs.holder.

He submitted that these bank accounts were shown in Abha Ranis Income Tax returns and were not touched by Mary.

The details of these accounts are mentioned in the Box A below:- BOX A SL.No.1.

PARTICULARS Savings Bank Account BALANCE AS ON BALANCE AS ON  
28.06.2011 (Rs.12.02.2013 (Rs.No.28,84,924.69 36,75,801.69 408721690 held  
with Indian Bank, Sarat Bose Road Branch.

2. 4.

2. 81,081.00 2,81,081.00 Fixed Deposit No.929926470 with Indian Bank Sarat Bose Road Branch.

50,00,000.00 50,00,000.00 Re-investment Plan with Indian Bank Sarat Bose Road Branch: a.

Account No.929901422 b.

Account No.929901761 17,74,618.00 17,74,618.00 Unit Deposit Schemes with Indian Bank Sarat Bose Road Branch: a.

No.102 b.

No.103 4,62,00,000.00 c.

No.104 d.

No.105 e.

No.106 f.

No.108 g.

No.110 3.

Savings Bank Account No.08750100004865 held with Bank of Baroda.

4,62,00,000.00 The second sheet related to the bank accounts/term deposits of which Mary is the fiRs.holder and her mother-in-law was the second holder.

They were declared in Marys Income Tax return.

These accounts are set out in Box B below:- BOX B SL.not PARTICULARS  
BALANCE AS ON BALANCE AS ON 28.06.2011 1.

Savings Bank Account No.025-246448-006 2.

HSBC Bank ReInvestment Plan in 1,62,29,475.00 Account No.025246448-006 3.

35,39,957.00 66,49,286.71 Unit Deposit Schemes with Indian Bank Sarat Bose Road Branch: a.

No.101 2,00,00,000.00 b.

No.107 c.

No.109 d.

No.112 e.

No.113 4.

12.02.2013 Fixed Deposit with Indian Bank Sarat Bose Road Branch Nos.: a.

929892111 b.

929892133 c.

929892188 4,50,00,000.00 d.

929892224 e.

951065830 f.

951066298 g.

951066662 h.

951067087 i.

951067383 NIL 10,00,000.00 NIL There is a third type of account, shown in Box C below, of a Joint Savings Bank Account of which Abha Rani Sinha was the fiRs.holder.

But the account is shown in the Income Tax returns of Mary.

BOX C SL.No.1.

PARTICULARS Savings Bank BALANCE AS ON BALANCE AS ON 28.06.2011  
12.02.2013(Rs.(Rs.) Account 11,21,287.60 4,60,778.79 No.408765413 with Indian  
Sarat Bose Branch.

held Bank, Road The fund in the accounts against serial no.2 of Box B included the sale proceeds of a property in the United Kingdom belonging to Mary, as submitted.

Furthermore, the sale proceeds in sterling were remitted to the said account and converted into Indian rupees.

Mr.Pratap Chatterjee, learned Senior Advocate appearing for Dr.

Bikash Sinha cited Padmanbhan Bhavani and Others versus Govindan Bhargavi and Another reported in AIR 197.Kerala 83.

That decision tends to hold that if an account is held jointly on the term, either or survivor, on the death of one of the joint holdeRs.it cannot be presumed that the entire balance in the account will go to the other joint holdeRs.not my prima facie findings.

The above decision did not deal with a particular account and the income therefrom being taxed in the hands of one joint holder.

In this case the bank accounts in Box B have been taxed in the hands of Mrs.Mary Catherine Sinha.

On the above evidence, there is a strong presumption that the entire funds in those bank accounts belong to her.

I can come to this conclusion with added confidence because a statement of the bank account was shown to me, which showed that sterling currency belonging to Mary were credited into the bank account, after conversion into Indian currency.

It was said that this amount was received on sale of Marys house in Britain.

This assertion could not be controverted.

On the same principle, I hold that Mrs.Mary Catherine Sinha is entitled to the account of which Abha Rani Sinha was the fiRs.holder and she was the second holder but income tax returns were filed by her.

Therefore, prima facie, I hold that Mrs.Mary Catherine Sinha will be allowed to operate these accounts shown in Box B and Box C without any restriction whatsoever.

On the same premises, the accounts which were jointly held by her and her mother-in-law, in which the name of her mother-in-law appeared as the fiRs.holder and taxed in the latters hands will be presumed to belong to her mother-in-law and she will be unable to operate those accounts.

The existing interim orders are modified to the above extent.

The above observations are prima facie.

I also knot that there are serious disputes between the parties regarding the source and application of the above funds.

Those disputes cannot be resolved in this probate proceeding.

I have made my prima facie observations.

Those will not prevent Dr.

Bikash Sinha or the other Joint Administrators from establishing any right in an appropriate form.

Affidavit in opposition in each application is to be filed by 8th March, 2013.

List these applications on 20th March, 2013.

Affidavits in reply may be filed in the meantime.

Mr.Samrat Sen prays for stay of this order, which is considered and refused.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I.P.MUKERJI, J.) nm Assistant Registrar (C.R.)

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