

Appellant Vs. Respondent

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Court : Kolkata

Decided On : May-06-2014

Judge : I. P. Mukerji

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET GA NO.529 OF 2013 WITH PLA NO.345 OF 2012 IN THE HIGH COURT AT CALCUTTA Testamentary and Intestate Jurisdiction ORIGINAL SIDE IN THE GOODS OF: BELA CHATTOPADHYAY ALIAS BELA CHATTERJEE(DECD.]. BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 6th May, 2014.

Mr.S.Sen, Mr.A.Pramanick, Ms.N.Adhyaappear.

Mr.S.Ghosh, Mr.D.Mukherjeeappear.

The Court : This is an application by the executor, in aid of the above PLA proceedings for, inter alia, the following orders : [a].An order of injunction be passed against the son of the deceased testatrix namely Sr.Siddhartha Chatterjee from dealing with in any way and/or transferring the said shares held in joint accounts with the deceased bearing 10081539 and 10081514 maintained with ABN AMr.Bank [now Royal Bank of Scotland].till disposal of the probate

proceedings or till such time as this Hon'ble Court may deem fit and proper; [b].An order passed directing ABN A Mr.Bank [now Royal Bank of Scotland]., Brabourne Road branch, Thapar House, Kolkata - 700 001 to maintain status quo in respect of the two D.Mat accounts No.10081539 and 10081514 held jointly with the deceased and his son Sr.Siddhartha Chatterjee till disposal of the present probate proceedings. In that application on 9th December, 2013 I had made an order directing the son of the testatrix Mr.Siddhartha Chatterjee, who did not receive any legacy under the Will, not to deal with any shares of the deceased held with jointly and also not to deal with those shares held singly by him, without the leave of this Court.

Now, the testatrix held very valuable shares in the two demat accounts mentioned in prayer [a].above with ABN A Mr.Bank [since Royal Bank of Scotland].According to the applicant, these shares, upon the death of the testatrix belonged beneficially to her estate.

According to Mr.Siddhartha Chatterjee these shares are now absolutely and beneficially held by him being the surviving joint holder.

Mr.Ghosh, learned advocate for Mr.Chatterjee places 9.10.1 and 9.10.2 of the bye-laws of NSDL to the effect that on the death of one of the joint holders of the shares, NSDL would recognise the other surviving holder to have the title thereto.

Although, the executor made this application, which involves adjudication of these rival rights of the parties, Mr.Sakhya Sen, learned advocate representing him submits that this Court does not have the jurisdiction to decide the title to the estate of the testatrix.

Moreover, Mr.Siddhartha Chatterjee intends to oppose the grant of probate and having so chosen to contest the Will, he cannot turn around and question the title of the testatrix to the property.

In any case, he submitted that the application of Mr.Chatterjee to file a caveat would be opposed by his client.

He also said that the said son of the testatrix had appeared in this application without filing a vakalatnama.

At the outset, I grant leave to Mr.Ghoshs advocate on record to file the vakalatnama on behalf of Mr.Chatterjee by tomorrow.

Mr.Sen is absolutely right when he submits that this Court does not have the jurisdiction to decide the title of the testatrix.

With regard to his second contention it is true that a caveator cannot challenge the title of the testator, in some cases, where this rule of estoppel applies.

It is not an absolute rule.

But when the caveators alleged property is claimed by the executor to be belonging to the deceased, he, can defend or prove his title.

But Mr.Sens client invited this court to go into this issue by filing this application, in which an order was passed about five months ago on 9th December, 2013 restraining Mr.Chatterjee from dealing with the shares.

Mr.Sens client has till date not filed any title suit.

Neither as Mr.Ghoshs client.

If this order of injunction was not there, Mr.Ghoshs client would have been free to deal with the shares as he liked, without any fetter from any Court.

It is because of this order of injunction that he has been restrained from dealing with the shares.

What has happened in the mean time is that Mr.Chatterjee has transferred all the shares from the joint account held jointly by him with his mother to a single account held solely by him.

But there is no allegation that he has parted with any of the shares.

On the contrary, if I vacate this order of injunction today, on the submission made by Mr.Sen they would be a grave danger that the executor of the estate would face.

In the event he succeeds in establishing his title to the shares, the shares may not be left, as Mr.Ghoshs client would be at liberty to transfer them.

Therefore, although it is necessary to relegate the parties to a civil action, nonetheless, considering the equities, some protective orders should be passed till either party is in a position to file a suit and obtain necessary orderRs.I agree with Mr.Ghosh that even if the case of the applicant is at the highest, the estate cannot have a higher claim than 50% of these shares held in the joint demat account.

There is no evidence whatsoever to justify any claim of the executor higher than 50%.

Therefore, I direct Mr.Siddhartha Chatterjee to segregate 50% of the shares in the account now held singly by him.

The 50% division should be made by dividing the number of shares held in each of the companies by half.

The order of injunction dated 9th December, 2013 is vacated with regard to 50% of the shares.

Mr.Chatterjee will furnish a statement of accounts for these shares, after segregation, to the advocate on record for the applicant, by 4th June, 2014.

The order of injunction would continue with regard to the other 50% till 30th June, 2014 or until further orders passed by a civil court, whichever is earlier.

I make it clear that although I have vacated the order of injunction with regard to the 50% shares, I have done so on my prima facie finding and the civil court would be at liberty to pass any order it deems fit and proper.

This application is accordingly disposed of.

Since no affidavits are invited, allegations contained in the petition are deemed not to be admitted.

All findings are prima facie.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(I.

Pkd.

A.R.[C.R.].P.MUKERJI, J.)

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