

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Aug-19-2014

Judge : Arijit Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

SHEET GA2804of 2013 With TS3of 2014 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE IN THE GOODS OF : PROFULLA CHURN LAW (DEC) BEFORE: The Honble JUSTICE ARIJIT BAJERJEE Date: 19th August, 2014 Appearance : Mr.Utpal Bose, Sr.Adv.Ms.Koeliya Banerjee, Adv..for the plaintiff/respondent.

Mr.Ritobroto Mitra, Adv.Mr.Deb Kumar Sen, Adv.Ms.Taniya Mitra, Adv..for the petitioneRs.The Court: This litigation stems from the Will of late Profulla Churn Law.

It is the contention of Mr.Boses client that Profulla Churn Law died having published his last Will and Testament dated 24th September, 1976.

Atin Law , Mr.Boses client and the son of the testator has applied for the probate of the said Will.

Special citation was issued to Mr.Mitras client being the daughter of the testator.

Mr.Mitras client Shelly Roy Chowdhury, has filed her affidavit in support of her caveat and the matter is at the stage of being declared as a contentious cause.

GA No.2804 of 2013 is taken out by Shelly Roy Chowdhury praying for an order of injunction restraining the alleged executors from collecting the income accruing from the joint properties in which the deceased had undivided shares as also for appointment of an independent person as Administrator Pendente lite to collect the income accruing out of the joint properties and keeping the share of the deceased in a separate account.

When the application was moved, an order dated 23rd September, 2013 was passed by Patherya , J.inter alia, to the following effect:The Court : Although by this application the petitioner seeks to restrain the executor and executrix from collecting the income of the estate and seeks appointment of an Administrator Pendete lite, both the reliefs need not be passed at present and the matter can be resolved by directing the executor and executrix appointed by the testator to deposit all sums collected on account of rent, issues and profits in respect of the estate to an account to be opened exclusively in the name of the executor and executrix and sums collected from the estate be not only deposited in such account but all expenses be also met from the said account.

This order is passed in order to prevent any intermingling of accounts of the estate with the individual account of the executor and executrix that may be maintained by them.

Although the issue of locus standi to maintain this application has been raised by Counsel for the executor and executrix as citation was issued to the caveatrix, applicant herein and a caveat has also been filed by her so also an affidavit in support thereof, at this stage the said issue cannot be considered. Today the matter has come up for final hearing upon completion of affidavits.

Mr.Ritobroto Mitra, learned Counsel appearing in support of the application submits that his client has no faith or trust in Atin Law who has become the sole executor upon the death of the testators wife who died during the pendency of this application.

He submits that it would be fair and proper if an independent person is appointed as Administrator Pendente lite to collect the income of the estate of the testator and to keep proper accounts thereof.

He further points out a statement being Annexure - A to his application where his client has listed certain valuable movables which, according to his client, have been suppressed in the affidavit of asset filed in the application for probate.

Mr.Utpal Bose, learned senior Counsel appearing for Atin Law draws this Courts attention to a letter dated 21.05.1971 apparently written by Shelly Roy Chowdhury, wherein she has stated that she was leaving her parents for good and that her parents should consider that their daughter was no more.

The said letter is Annexure - E to Atin Laws affidavit-in-opposition.

Mr.Bose also draws this Courts attention to an affidavit-in-opposition affirmed by Shelly on 20.07.2004, copy whereof is Annexure - F to Atins affidavit-in-opposition.

In the said affidavit Shelly declared as follows: 1.

That I took all my ornament which was given by my father at the time of leaving my parents house.

2. That I have voluntarily agreed to forgo my claim of my fathers property against money.

3. That in pursuance of the said mutual agreement and in consideration of the sum of Rs.50,000/- f(Rupees Fifty thousand only.) has been received by me from my father Sr.Profulla Churn Law of 1, Bechu Chatterjee Street, Kolkata - 700009 to-day and I voluntarily forgoing my claim in respect of my fathers property from to-day.

4. That I also promise that I will never claim any share of my fathers property after the death of my father. Mr.Bose submits that having left the parental house more than forty years ago, today suddenly Shelly should not be allowed to approach the Court for interim ordeRs.According to Mr.Bose the subsisting interim order sufficiently protects Shelly and since the probate proceeding is ready for hearing,

the same may be expedited.

In reply Mr.Mitra submits that the prayers that he has made, are for the benefit of the estate of the deceased and an order should be passed in terms of such prayers.I have considered the rival contentions of the parties.

I am conscious that the Court is empowered under Section 247 of the Indian Succession Act to appoint Administrator Pendente lite where the facts and circumstances so demand.

However, I am of the view that the interim order dated 23rd September, 2013, modified to the extent that the executor will also furnish accounts to Shelly Roy Chowdhury every month till disposal of the probate proceeding will sufficiently protect the interest of Shelly.

It is not in dispute that Shelly had deserted her parents more than forty years ago.

This Court is reluctant to allow her to appear in the scene suddenly after forty years and seek interim orders.Accordingly, the order dated 23rd September, 2013 is continued with the additional clause that Atin shall furnish true and faithful statement of accounts to Shelly every month till the disposal of the probate proceeding.

Such statement of accounts would be for the period with effect from 23rd September, 2013 till date and for the future period.

The statement of accounts for the past period will be furnished within four weeks from date.

I was not required to and have not gone into the issue of genuineness of the testators Will.

The application stands disposed of without any order as to costs.

(ARIJIT BAJERJEE, J.dg2

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