

O.C. 03 of 2022
CNR No. WBCC01-002392-2022

Present: Sri Subhas Kumar Kar, Judge, Bench-V (WB00592)

Order No. 62/ Dated 27.02.2025

Parties have taken their respective steps.

Date is fixed for order.

It appears from the record that both sides were heard on the petition under Section 253 of the Indian Succession Act and today it is taken up for order.

This petition is filed on behalf of the O.P no. 4, Kalpana Gupta on the premises that the petitioner Ankur Malik has filed this case for grant of Letters of Administration being the beneficiary of the alleged Will allegedly executed by Prema Gupta and since the alleged executrix of the said Will was not willing to file any Probate case the instant case for grant of Letters of administration was filed by the beneficiary and while the trial is in progress, the petitioner Ankur Malik along with his brother Vineet Malik in connivance with his mother Anuradha Malik entered into a Memorandum of understanding with the Calcutta Medical Centre Limited, an illegal occupier of the premises, represented by Firdaus Ahmed, Sagufta Ahmed, Ghazali Akhtar and Sajda Ali on 19.12.2023 along with a Deed of Assignment executed in between Ankur Malik and Vineet Malik being transferor and Anuradha Malik being confirming party on one side and Calcutta Medical Center Limited the other party and said Ankur Malik and Vineet Malik has received Rs.1,60,00,000/- from said Calcutta Medical Centre on different dates through cheques and the grievance of the present O.P is that Ankur Malik and Vineet Malik are not in the line of successor of the property left by deceased Prema Gupta and unless an order restraining Ankur Malik and Vineet Malik from dealing with the immovable and movable property of deceased Prema Gupta is passed the natural heirs of said

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Prema Gupta shall suffer an irreparable loss and injury if the present case for Letters of administration stands dismissed.

Petitioner, Ankur Malik has filed his written objection wherein he admitted that a term of settlement was entered into on 19.12.2023 in between the parties mentioned in the petition under Section 253 of Indian Succession Act and he also filed an order of the Hon'ble High Court dated 16.01.2024 passed in IA no.GA/4/2022 and IA no. GA/5/2022 in connection with CA/68 of 2011 and it is stated on his behalf that the said factum has been recorded in the said order in connection with the said C.S 68 of 2011 as an amicable settlement has been worked out in the said civil suit.

On perusal of the alleged Will it appears that one Usha Saxena daughter of the deceased testatrix was appointed as executor in the alleged Will and in terms of provision of the Indian Succession Act bequeathed property vest on the executor after the demise of the testatrix and in the instant case executor namely Usha Saxena has expressed her unwillingness to act as executor and under such circumstances the petitioner namely Ankur Malik being the beneficiary of the Will filed this case for grant of Letters of Administration.

Admittedly, deceased testatrix left one son and four daughters and the petitioner Ankur Malik is the grand son of the testatrix and therefore he is excluded from the line of succession of the property left by Prema Gupta.

It is established principal of law that the interest of beneficiary does take effect unless and until the Probate or Letters of Administration is granted.

Therefore in the instant case, Ankur Malik and Vineet Malik being not in the line of succession have no authority to deal with the

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immovable or movable property left by Prema Gupta during the pendency of the present proceeding.

Therefore, the point raised by the O.P no. 4 has substance and I am inclined to allow the petition with the following direction.

Hence, it is

ORDERED

that the instant petition under Section 253 of the Indian Succession Act is allowed and the petitioner Ankur Malik is directed to furnish an indemnity bond amounting to Rs.1,60,00,000/- on a paper sufficiently stamped by the next date fixed on condition that he shall indemnify the natural heirs of Prema Gupta since deceased to the extent of the said sum if the present case for Letters of Administration is dismissed.

In view of the direction of the Hon'ble Court for expeditious hearing of the case, let the case be fixed for further cross-examination of P.W.1.

Fix 24.03.2025 for further cross-examination of P.W.1.

It is made clear that no unnecessary adjournment shall be granted to either side henceforth.

D/c by me,

Judge.

Judge, Bench-V,
City Civil Court, Calcutta.