

T.S. - 1443/24 CNR – WBCC0107547-2024

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 02

04.9.24

The record is put up today on the basis of a petition filed on behalf of the plaintiff, who intends to move the application for temporary injunction for passing an adinterim order upon the same.

It is reported from the office that no caveat is pending. Accordingly the petition is taken up for hearing.

Heard the Ld. Advocate for the plaintiff at length.

Requisites have been put in.

Issue notice upon the defendants, calling upon them to show cause within 15 days from the date of receipt of this notice as to why the prayer for temporary injunction shall not be granted.

In short, the case of the plaintiff is that one Durga Rani Seal was the sole and absolute owner of the A schedule property including the B schedule property by virtue of purchase for valuable consideration and that after her husband died issueless, she was suffering from ceaseless illness for a prolonged period and was not in a good physical or mental condition to express her free will and voluntary desire and ultimately she died on 8.7.14 after undergoing institutional treatment in several hospitals / nursing homes under the care and custody of her husband's brother i.e. the father of the plaintiff and her other family members. Thereafter one Pranati Seal, who happened to be the wife of one of the brothers of the said Durga Rani Seal, filed an application for grant of probate before the Bench of Ld. Chief Judge City Civil Court Calcutta being Probate case no 16/15 as the executrix of the last Will and testament of the said Durga Rani Seal without citing her next heirs upon suppression of their existence and ultimately obtained a probate behind the back of the father of the plaintiff on 19.3.18. After getting knowledge of the said fact, the father of the plaintiff, as one of the class II ( II ) 3 heir of the said Durga Rani Seal under the Hindu Succession Act, filed Revocation case no 01/18 for annulment of the said probate. The said Pranati Seal appeared in the said Revocation case and while contesting the same, she illegally transferred the B schedule property out of the A schedule property in favour of the defendant nos 3, 4 and 5 by virtue of a registered deed of conveyance as described in schedule C to the instant application. It is contended by the plaintiff that the said Pranati Seal had no class I heir and as such she used to reside during the last phase of her life with the defendant nos 1 and 2, who happen to be her nieces, and she most mischievously, during pendency of the said revocation case, executed her last will and testament bequeathing the balance portion of the A schedule property in favour of defendant nos 1 and 2 and subsequently she died on 7.7.22. The further case of the plaintiff is that the defendant nos 1 and 2 were substituted in the said Revocation case and after the death of his father, the plaintiff along with the proforma defendant nos 6, 7, & 8 were substituted in his place. It is again the case of the plaintiff that in the meantime the defendant nos 1 & 2 filed Probate case no 71/22 before the Bench of Ld. Chief Judge City Civil Court Calcutta for obtaining probate in respect of the last Will and testament of the said Pranati Seal which has been stayed till

the disposal of the said Revocation case. It is again the case of the plaintiff that the said Revocation case no 01/18 has been allowed whereby the said probate granted in favour of Pranati Seal has been revoked. It is further contended by the plaintiff that taking advantage of the Will of Pranati Seal as well as the registered deed of conveyance as described in schedule C to the instant application, the defendants are intending to alienate the A schedule property to outsiders and hence the instant suit along with the present application.

Upon considering the submission made by the Ld. Advocate for the plaintiff as well as regard being had to the copies of documents furnished on his behalf like Will dtd 10.5.14 of Durga Rani Seal, Probate application in connection with Probate case no 16/15, application for revocation of Will in Revocation case no 01/18, order dtd 5.6.24 passed in the said Revocation case revoking the probate granted in favour of Pranati Seal, Deed of Conveyance dtd 7.9.21 executed by Pranati Seal in favour of defendant nos 3, 4 & 5, letter of complaint dtd 5.8.24 lodged by the plaintiff before the OC Burtolla PS against the defendant nos 1 to 5, order sheets dtd 11.4.23, 11.7.23, 25.7.23, 20.9.23 & 9.10.23 passed in Probate case no 71/22, order sheet dtd 5.6.24 passed in Revocation case no 01/18 etc., I feel that at least at this stage of this suit the plaintiff has been able to make out a good prima facie case at least against the defendant nos 3,4 & 5 in respect of the B schedule property while the balance of convenience and inconvenience appears to be tilted in his favour and that apart exigency also appears to be involved in this matter to that extent.

Considered as such, the defendant nos 3, 4 & 5 are hereby restrained by an adinterim order of temporary injunction from selling / transferring / alienating / encumbering / creating any 3<sup>rd</sup> party interest in respect of the B schedule property till 19.9.24.

The plaintiff is to comply with the provisions of the Order 39 Rule 3(a) and (b) CPC.

To date for S/R and A/D.

D/C by me

Judge

Judge 2<sup>nd</sup> Bench