

Order no. 31
02.02.2021

Today the date is fixed for passing order in respect of the petitioner filed u/s 151 Cr.P.C. which was heard in presence of all the parties on the previous date. This petition filed by the petitioner is for restraining the opposite parties by way of any direction / order not to change the scheduled of the “will” by way of making any addition/alteration till the disposal of the suit.

Heard both sides. Considered.

Actually, the petition u/s 151 Cr.P.C. is in the form of injunction petition having prayer like in injunction interlocutory application. This is the probate suit. Parties are contesting. It is pragmatic to hold that if there is a serious issue to be tried it will lead to a just result and mini trials on the application for an interlocutory injunction is required to be prevented.

It is correct to hold that the court dealing with the “will” is the court of testamentary court has no jurisdiction to go into the question of the title of the deceased to the property mentioned in the “will”. It is thus clear that in a testamentary suit, the property which is mentioned in the “will” or property which may be or may not be left behind by the deceased is not the subject matter of the testamentary suit, and therefore, while exercising the power under CPC, the court is not entitled to make any interim order in relation to protection of the property unless an order is required to be made by the court in the peculiar circumstances under part VII of the Indian Succession Act.

However, it is not found here that the petitioner has sought for appointment of an administrator u/s 247 of the Indian Succession Act or has sought for interim protection u/s 192 or 193 of the Indian Succession Act 1925.

The application filed u/s 151 CPC which is omnibus in nature by hiding the appreciation purports to be under order 39 Rule 1 and 2 of CPC. Ofcourse, requires to be dismissed and as such the application filed u/s 151 CPC by the petitioner is hereby dismissed on contest without costs.

To 25.03.2021 for PH.
Dictated and Corrected by me

Sd/-
ADJ, FTC 1, Sealdah
WB713

