

AD-17
Ct No.16
18.11.2024
CP

FAT 219 of 2024
with
CAN 1 of 2024
with
CAN 2 of 2024

Abir Chakraborty
Vs.
Ashish Chakraborty

Mr. Bhaskar Ghosh

....for the appellant

Mr. Anirban Bose
Mr. Sourath Dutta
Mr. Satyajit Senapati

....for the respondent

1. Supplementary affidavit filed today be kept on record.
2. CAN 1 of 2024 has been filed for stay of operation of the impugned probate decree.
3. However, in view of the nature of a probate decree, which is a judgment *in rem*, we are of the opinion that the appropriate remedy which can be sought by the appellant would at best be injunction. Accordingly, leave is granted to the learned advocate-on-record for the petitioner to carry out necessary amendments to the prayer portion of the present application as well as the cause title, seeking injunction.

4. Learned counsel for the respondent at the outset submits that the petitioner does not have a prima facie case and seeks to justify the judgment of the first court.
5. Learned counsel also places reliance on Section 307 of the Hindu Succession Act, 1925 and argues that as per the said provision, an executor has power to dispose of the property of the deceased vested in him under Section 211, either wholly or in part, in such manner as he may think fit.
6. However, we are of the opinion that Section 307 *per se* does not operate as a fetter on the testamentary court to explore into the option of grant of injunction and/or going into the question of the veracity of the disputed Will. Since the matter is *sub judice* before this Court in the present first appeal, we deem it prudent to direct the parties to maintain status quo in order to ensure that status quo is maintained with regard to the property which is the subject-matter of the Will and the property does not change hands and/or alter its nature and character in the meantime, which might have a bearing on the final outcome of the present *lis*.
7. Accordingly, the parties are directed to maintain status quo with regard to the subject property of the disputed Will till disposal of the appeal.

8. CAN 1 of 2024 is disposed of accordingly.
9. In view of the appearance of the respondent through counsel, service of notice of appeal on the respondent is hereby dispensed with. The appellant shall put in requisites and special messenger costs for bringing the records of the case at the earliest. Records shall be accordingly brought by special messenger. The appellant shall prepare and file the requisite number of paper books within eight weeks from the date of service of notice of arrival of the records on the learned advocate for the appellant.
10. Liberty to the parties to mention the appeal for enlistment as and when the same is made ready for hearing.
11. CAN 2 of 2024 is deemed to be on the day's list on consent of the parties.
12. In view of the above order, since similar relief has been sought in CAN 2 of 2024, the same is disposed of in the light of the above observations.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)