

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.823 OF 2015
IN
SUIT NO.354 OF 2015
WITH
SUIT NO.354 OF 2015**

Mrs. Parna Pradip Sengupta ...Plaintiff

vs

Mr. Saibal Niranjana Saha And 2 Ors. ...Defendants

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Mr. H.K. Vazirani, a/w. Ms. Pushpa H. Goswami, for the Plaintiff/Applicant.

Mr. Mani Thevar, i/b. Mahesh Menon & Co., for Defendant No.1.

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CORAM : S.C. GUPTE, J.

DATED : 13 FEBRUARY, 2018

P.C. :

. Heard learned Counsel for the parties.

2. This notice of motion is taken out in a suit for administration and partition. The Plaintiff claims $\frac{1}{2}$ share in the property of the deceased. The property, set out in Exhibit "E" to the plaint, consists of immovable properties, including residential plot, factory and industrial unit. Defendant No.1 disputes the schedule of properties annexed as Exhibit "E" to the plaint. At the ad-interim stage, there was a statement made by Defendant No.1 not to create any third party rights or part with possession of any of the suit properties. Learned Counsel for Defendant No.1 is agreeable to continue the same statement as an interim order pending the hearing and final disposal of the suit. Defendant Nos. 2 and 3 are not present. An order of injunction in similar terms will have to follow in their case as well.

3. Learned Counsel for the Plaintiff submits that Defendant No.1 has already dealt with a large property forming part of the estate of the deceased, which is valued at about Rs.1.30 crores and that Defendant No.1 be made to account for the same as of date by bringing the Plaintiff's share in this property into the Court. I am afraid on the facts of the present case no such order can be passed as of date. According to the Plaintiff herself the suit properties, in respect of which there is a restraint as noted above, have a substantial worth, that is to say, over Rs.40 crores. The restrictive relief in respect of the property is adequate to protect the Plaintiff's interest in the suit. An order of deposit, as claimed by the Plaintiff, can only be passed, if there is a case made out for an order of attachment before judgment. If Defendant No.1 has dealt with any of the suit properties so far, he will have to account for the same at the hearing of the suit and the properties, in respect of which the interim order is being passed, are large enough to admit of any such accounting. No relief, as claimed by the Plaintiff is necessary as of date for such accounting.

4. Accordingly, the notice of motion is disposed of by accepting the statement of Defendant No.1 that he shall not create any third party right or part with possession of the suit property. Defendant No.1 will keep an account of the income and receipts from the suit properties, which are held by him. There will be an interim injunction in the same terms even against Defendant Nos. 2 and 3.

5. The notice of notion is disposed of. Costs to be costs in the cause.

(S.C. GUPTE, J.)