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June 23,
2021

C.O. No.876 of 2021

(Via Video Conference)

**Sukumar Pradhan
Versus
Sriman Panchanan Gayen and others**

Mr. Anindya Bose,
Mr. Ashok Kumar Singh,
Mr. Zeeshan Haque.
...for the petitioner.

Despite service, none appears on behalf of the opposite party nos.1 and 2 when the matter is called on for hearing.

The affidavit-of-service filed today indicates that the copies could not be served on the opposite party nos.3 and 4 since their door was locked. Be that as it may, since substantial notice has been effected on the absentee opposite parties by virtue of service on the opposite party nos.1 and 2 (all of whom are part of the same family and reside together), keeping in mind the urgency of the petitioner's prayer, the revisional application is taken up for ex parte hearing.

The petitioner contends that the petitioner is the executor of a Will and relies on Section 211, read

with Section 213, of the Indian Succession Act, 1925 for the proposition that the property has vested in the executor. Such position is corroborated in the judgment cited by the learned counsel for the petitioner, reported at (2009) 10 SCC 223 (*FGP Limited vs. Saleh Hooseini Doctor and another*).

The petitioner filed a suit for declaration and permanent injunction. In connection with the suit, an application for temporary and ad interim injunction was also filed seeking injunction restraining the opposite parties from dispossessing the plaintiff from the suit property forcibly, from causing damage and wastage to the suit property as well as creating third party interest therein

In so far as possession is concerned, apart from the averments in the plaint and injunction application, there is nothing before this Court at the present juncture to arrive at a factual finding as regards who is in possession of the suit property. However, the reasons given by the appellate court for refusing the injunction sought, being primarily the pendency of the probate proceeding, is not valid for the purpose of refusing injunction, since the property is deemed in law to have vested in the executor till probate is granted. The executor, by initiating a

probate proceeding, has shown his bona fides with regard to the grant of probate.

As such, the petitioner has made out a strong prima facie case for grant of injunction at least regarding change of nature and character and creating third party interest in respect of the suit property.

In such view of the matter, C.O. 876 of 2021 is allowed, thereby setting aside Order No.3 dated January 19, 2021 passed by the Additional District and Sessions Judge, Fourth Fast Track Court at Barasat, District- North 24 Parganas in Miscellaneous Appeal No.06 of 2021, arising out of Order No.2 dated December 21, 2020 passed by the Civil Judge (Senior Division), Second Court at Barasat in Title Suit No.629 of 2020. The opposite parties are restrained from changing the nature and character of the suit property as well as from creating any third party interest and/or encumbrance with regard to the suit property till disposal of the appeal, bearing Miscellaneous Appeal No.06 of 2021.

The trial court as well as both parties shall act on the communication of the learned advocate for the petitioner and/or on server copy of this order, without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)