

ORDER SHEET
APOT/161/2021
WITH
PLA/327/2021
IA NO: GA/1/2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IN THE GOODS OF OM PRAKASH MANIYAR (DEC) SUBHASH MANIYAR
VS
CHANDNI MANIYAR

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 1ST DECEMBER, 2021.

Appearance :
Mr. Sakya Sen, Adv.
Ms. M. Chowdhury, Adv.
Mr. T. K. Mitra, Adv.
Mr. Ramesh Chaudhury, Adv.
...For the appellant

Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. R. Dutta, Adv.
Mr. V. V. V. Sastry, Adv.
Mr. T. Bose, Adv.
...For the respondent

The Court : We have heard this appeal and the stay application on more than one occasion.

At this stage, we are of the view that the appeal and the stay application can be disposed of dispensing with all formalities.

The testator died leaving two alleged Wills. The second alleged Will dated 3rd August, 2020 is before us. Through his marriage, he had one son, the appellant. It is said that he had association with another woman who also claims to be his wife, the respondent. Through her he had another son.

The Will before us is highly contested. Under it, 45% of the legacy goes to the appellant, another 45% to the son through his alleged second marriage and 10% to a charitable trust. Through the first Will dated 30th

January, 2018, with which we are not concerned in this proceeding, a legacy is also received by the respondent.

By the impugned judgement and order dated 8th October, 2021, the respondent has been directed to be paid a subsistence allowance of Rs.10 lakhs per month until further orders.

This is contested by the appellant.

Mr. Sakya Sen, learned counsel for the appellant submits that without the Will being probated, the respondent cannot receive the monthly maintenance amount, under the law. The impugned order is flawed. On the other hand Mr. S. N. Mookerjee, learned advocate general assisted by Mr. Sabyasachi Chowdhury contended that being the propounder of the first Will of the testator under which the respondent is a legatee, the appellant is estopped from taking this objection. Moreover, the amount directed can be paid for maintenance of the respondent, considering her station in life.

If the second Will is probated then his alleged second wife gets nothing. If it fails, she might or might not succeed to inherit part of a property on intestacy.

We are of the opinion that until and unless these contentions are prima facie adjudicated upon, a direction for payment of Rs. 10 Lakhs per month as subsistence allowance to the respondent might be detrimental to the estate, if at the time of final adjudication of the matter, it is found that she has no right whatsoever.

Let these issues be decided prima facie by the learned trial judge. For the time being, we think it fit and proper that instead of Rs.10 lakhs per month, the respondent be paid Rs.7 lakhs per month, on the express undertaking to this Court by way of an affidavit given by Mr. Dheeraj Maniyar, son of the testator through the respondent and filed before the learned Registrar (O.S) by 7th December, 2021 that the said monthly sums disbursed per month to his mother would be treated as loans from the estate to him and that at any point of time, the moneys that are

receivable by him as legacy from the estate of his deceased father could be deducted and credited to the fund of the estate, as repayment of this loan. The respondent would be entitled to receive the above monthly payments only on a certificate issued by the learned Registrar that the undertaking has been filed in accordance with this order.

The respondent would be entitled to a further sum of Rs. 3 lakhs per month provided Dheeraj Maniyar furnishes an automatically renewable bank guarantee from a nationalized bank in favour of the Registrar, Original Side securing this amount that is paid to his mother.

This order will be subject to any variation that may be made by the learned single judge after hearing the interim application.

The impugned order dated 8th October, 2021 is modified to the above effect.

Let the interim application be listed before the learned single judge according to his lordship's convenience.

The appeal and the connected stay application are disposed of accordingly.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)