April 8, 2024
Sl. No.5
Court No.19
s.biswas

CO 704 of 2022

Sri Subhabrata Roy and another
vs.
Sri Debabrata Roy and others

Mr. Rajdeep bhattacharya
Md. Imteyaz Aslam Lodhi
Mr. Debashis Banerjee
... for the petitioners

1. Affidavit of service is taken on record.
2. Despite service, none appears on behalf of the opposite parties.
3. The revisional application arises out of an order dated December 24, 2021 passed by the learned Additional District Judge, 2nd Court, Serampore, Hooghly, in Misc. Appeal No.9 of 2019. The said misc. appeal arises out of the order passed by the learned Civil Judge (Junior Division), 2nd Court, Serampore, Hooghly in Title Suit No.296 of 2015.
4. The learned trial judge did not grant any temporary injunction. Aggrieved, the plaintiffs filed the misc. appeal, inter alia, alleging that the learned trial judge failed to take into consideration the fact that the plaintiffs had a prima facie case to go to trial. If the fixed deposits and money lying with the bank and post office were not protected by an order of injunction, the defendants who had allegedly

brainwashed their predecessor and got some money deposited in their names, would withdraw the amount and misappropriate the same. They were denying the lawful claim of the plaintiffs to the money, as heirs of the deceased.

5. It was the specific contention of the plaintiffs that the fixed deposits lying in the bank and post office were created out of the funds of Madhab Chandra Roy (since deceased), jointly with defendant nos.1 and 2. After demise of Madhab Chandra Roy, the defendant nos.1 and 2 became trustees and custodians of the said money. Thus, the plaintiffs were entitled to hold the same in trust for the other legitimate claimants. The duty of such custodian was to disburse the amount equally amongst the rightful owners. The learned appellate court came to the following findings:-

(a) deposit of money in the joint names did not amount to a gift in favour of the defendant nos.1 and 2;

(b) the survivors of the accounts were at best holding the money in trust of the estate of the deceased;

(c) the burden of proof that the intention of the deceased was to gift the property to the defendant nos.1 and 2, was upon the said defendants;

(d) In the absence of such proof and without evidence, the issue could not be decided.

(e) The subject matters of the suit were the money lying in the fixed deposit in the bank and in the post office. They were in the joint names of Madhab Chandra Roy and the defendant nos.1 and 2, as either or survivor.

(f) The deceased was the first holder in all the deposits in the bank and post office.

(g) Although the defendant nos.1 and 2 claimed that the said money lying in the bank and post office had been bequeathed in their favour by a 'Will', no probate had been granted.

6. Under such circumstances, the misc. appeal was allowed and the defendant nos.1 and 2 were restrained from withdrawing any money lying with the bank and post office as mentioned in the schedule of the plaint, till the disposal of the suit. The defendant nos.3, 4 and 5 were restrained from disbursing the money lying in the bank and post office till the disposal of the suit.

7. Mr. Bhattacharya, learned advocate appearing on behalf of the petitioners/defendant nos.1 and 2, has assailed the order of the appellate

court on the ground that the monthly income scheme (MIS) having a principal amount of Rs.1,44,000/- was in the names of defendant nos.1 and 2 and the same was the exclusive fund of the defendant nos.1 and 2. The name of the father did not figure in the said MIS. The post office also submitted that the MIS stood in the name of the defendant nos.1 and 2.

8. I find from the schedule of the plaint that the MIS is mentioned as schedule C thereof. The account is a subject matter in the suit. In paragraph 6 of the plaint at page no.47, it has been specifically averred that the defendant nos.1 and 2, in coalition and in conspiracy with the defendant no.5, were threatening to withdraw the said amount prior to the date of maturity. The defendant nos.1 and 2 were also withdrawing the monthly interest. The deceased Madhab Chandra Roy, issued a letter on March 27, 2015, to the post office asking the post office to stop payment of the money lying in the MIS, to the defendant nos.1 and 2. The post office did not pay any heed to such request. Again, the plaintiff no.1 submitted a letter to the post office to stop payment of the amount lying in the MIS, to the defendant nos.1 and 2.

9. As per the plaint case, the creation of the MIS was against the wishes of the deceased Madhab Chandra Roy who had intimated the post office not to release payment of the amount lying in the MIS, in favour of the defendant nos.1 and 2. In the written objection filed by the defendant nos.1 and 2 to the application for injunction, the contention of Mr. Bhattacharya that the MIS was created from the funds belonging exclusively to the defendant nos.1 and 2, has not been stated. The stand of the defendant nos.1 and 2 in the objection to the prayer for injunction was that the deceased had left behind a Will, bequeathing all the money lying in the post office and the bank, to them.

10. The learned appellate court was correct in holding that unless the Will was either probated or the defendant nos.1 and 2 could prove that those were their own money, injunction should be granted till the disposal of the suit, or else it would be difficult to recover the money from the defendant nos.1 and 2, in case the plaintiffs ultimately succeeded in the suit.

11. Under such circumstances, in the absence of any averment in the objection filed by the defendant nos.1 and 2 with regard to the MIS having been created from their exclusive funds and without

any disclosure of any source of such funds from which the defendant nos.1 and 2, had opened the MIS, this court does not deem it fit to interfere with the order impugned. The deceased specifically asked the post office not to release the funds from the MIS to the petitioners. The balance of convenience and inconvenience is in favour of granting an injunction for protection of the money. If the money is withdrawn and the plaintiffs succeed, then it would be a hardship for the plaintiffs to recover the same.

12. The order impugned is well-reasoned. The documents on record and the submissions of the parties have been considered and the law has been discussed. The nominee or the joint holder of an account, can at best be the custodian in respect of the estate of the deceased and the nominee holds the same in trust for the other heirs. The ownership of the money has to be adjudicated in the suit. The money lying in the bank and the post office deserve to be protected. The MIS is earning interest which is being accumulated in the account itself. Thus, the defendant nos.1 and 2 will not suffer any injury.

13. Under such circumstances, the revisional application stands disposed of, without any

interference. The learned court is requested to dispose of the suit within a period of six months from the date of communication of this order, as it has been informed that the issues have already been framed.

14. All the parties are directed to act on the basis of the server copy of the order.

15. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities

(Shampa Sarkar, J.)