

08.01.2025
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Sl. No. 68
Ct. No. 08

FMA 625 of 2022
With
CAN 1 of 2022

Kanai Lal Mahato & ors.
-Versus-
Gopal Shaw

Mr. R. Mahata
Mr. A.S. Ray

.... For the appellants

After meaningful reading of the Judgment impugned in the instant appeal, the quarry was raised to the appellants as to whether they satisfy the core ingredients of an aggrieved person.

Undeniably, an application for grant of probate was taken out by the executor appointed under the Will which was converted into a contentious cause. Certain difficulties were faced by the executor in administering and/or managing the estate of the testatrix and interestingly, an application was taken out by him for appointment of administrator *pendente lite* to administer and manage the estate left by the testatrix.

It immediately attracts a question whether an executor is entitled to take out such application or it would be presumed that he is unable to administer and manage the estate or in other words, an implied refusal to act in a capacity of an executor. Since neither of the parties raises such issue, we need not have to delve into the aforesaid point.

It is evident from the record, more particularly, the impugned order that the executor categorically averred in the said application that the defendants/appellants are in occupation of the property bequeathed to the beneficiaries under the said Will and, therefore, they should be appointed as an administrator *pendente lite*. The impugned order further revealed that a consent was given by the plaintiff/respondent to appoint the appellants as administrator *pendente lite* as they are in possession of the estate.

The instant appeal is filed at the behest of the defendants/appellants who are in possession of the estate left by the testatrix despite having appointed as administrator *pendente lite*.

In course of hearing, the counsel for the appellants did not make a single whisper that the appellants are not interested to act as an administrator *pendente lite*; rather Mr. Mahata, learned advocate for the appellants conveys the intention of his client that they have no objection to act as an administrator *pendente lite* but raises an issue on the language and/or finding returned in the impugned order which according to him creates a confusion whether the executor is appointed as an administrator *pendente lite* or the appellants. Such confusion in our opinion does not arise at all taking into account the fact that the executor himself applied for appointment of the administrator *pendente lite* and gave consent in course

of the hearing before the probate Court that the appellants being in possession of the estate left by the testatrix, they should be appointed as administrator *pendente lite*.

In view of the stand of the appellants that they have no objection to discharge the duties and functions of the administrators *pendente lite* as they are admittedly in possession of the estate left by the testatrix, they cannot be regarded as an aggrieved person.

The appeal is, thus, dismissed without any order as to costs.

The connected application being CAN 1 of 2022 is also dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)