

AD-42
Ct No.16
09.04.2025
TN

FMA 574 of 2025
IA No: CAN 1 of 2025

Michael Ghosh @ Michael Soumen Ghosh
Vs.
Ranjan Ghosh and others

Ms. Malabika Roy Dey

....for the appellant

1. The present appeal has been preferred against the refusal of a prayer for ad interim injunction in connection with a suit filed by the appellant for declaration that one Satyabrata Ghosh is the father of the plaintiff/appellant and for consequential reliefs, including permanent injunction restraining the defendants from denying the parent of the plaintiff.
2. Learned counsel for the appellant argues that despite the present plaintiff/appellant being the biological son of Satyabrata Ghosh, the alleged testator in a Will, probate of the said Will was granted without citation on the present appellant on the pretext that the appellant is not the biological son, but a “stepson” of the said testator. Even in the Will, which the appellant claims to be manufactured, it was stated that the relationship between the testator Satyabrata Ghosh and the plaintiff was that of a stepfather and stepson.

3. Learned counsel submits that an application for revocation was filed before a learned Single Judge of this court, which being dismissed, an appeal has been preferred, which is now pending. In connection with the appeal, an interlocutory application was moved and while hearing the same, the concerned Division Bench taking up the appeal, by an order dated February 11, 2025, *inter alia* observed that it was made clear that the status of the appellant was not decided in the appeal and since an action was contemplated by the appellant for establishing his right, there shall be an order of status quo with regard to further administration of the estate for a period of four weeks. Upon such observation, along with the interlocutory application, the Division Bench also disposed of the appeal itself.
4. It is submitted that pursuant to such observation, the present suit has been filed for declaration of father-son relationship between the said late Satyabrata Ghosh and the plaintiff.
5. It is contended that the learned Trial Judge, while refusing the ad interim injunction, merely cited the grant of probate by this court, without taking into consideration the observation made by the Division Bench in connection with the appeal preferred against the same.

6. However, although there are certain minor cosmetic errors in the impugned order of the learned Trial Judge, we are agreeable with the conclusion of the same.
7. First, the temporary injunction sought, restraining the defendants from acting on the impugned grant of probate which was obtained from this court, is *prima facie* not maintainable, in view of the fact that a judgment granting probate operates as a judgment *in rem*. It is doubtful as to whether a regular civil court, while deciding the paternity of a particular person, could, within the limited *in personam* scope of such adjudication, injunct a party from giving effect to a probate, which is a judgment *in rem*.
8. Secondly, the injunction sought in the temporary injunction application tantamounts to the beneficiaries of the Will, in respect of which a probate has already been granted, being restrained from dealing with the subject property of the Will in any manner whatsoever. However, such injunction would be beyond the scope of the suit itself. In the suit, the subject-matter is not corporeal rights to any property as such but the status of the plaintiff as son of his father. The suit revolves, in its present form, entirely around a declaration sought by the plaintiff that Satyabrata Ghosh is his father and for permanent injunction restraining the defendants from denying

the parenthood of Satyabrata Ghosh vis-à-vis the plaintiff.

9. Thus, in connection with such suit, the court could not grant an injunction which would in effect restrain the defendants from dealing with the subject-matter of the probate.
10. That apart, we find that the prayers made in the injunction application itself are in direct contrast with and in deviance of the prayers made in the plaint itself. The grant of probate has not been, and could not be, challenged in the civil suit, for which a revocation application was already filed and dismissed and an appeal is pending against such dismissal. The conspectus in the suit is merely the relationship of the plaintiff vis-à-vis late Satyabrata Ghosh, regarding which declaration and permanent injunction has been sought. A prayer for temporary injunction restraining the defendants from giving effect to the probate would, thus, be beyond the scope of suit rather than being in aid of the reliefs sought in the suit.
11. Also, the learned Trial Judge was justified in observing that in view of the probate granted by this court, the said court had no jurisdiction to pass any order of injunction in respect of the said probate.
12. As such, we do not find any merit in the appeal and accordingly, FMA 574 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

13. Consequentially, IA No: CAN 1 of 2025 is also dismissed.
14. It is, however, made clear that none of the above observations shall preclude the plaintiff/appellant from appropriately amending his plaint by incorporating the reliefs in respect of the declaration of title of the plaintiff to the subject property as well as consequential reliefs. If such amendment is sought, the learned Trial Judge shall independently decide the same on its own merits upon hearing the other side and come to a conclusion thereon. In the event such amendment is allowed, the plaintiff will be at liberty to amend the injunction application and/or file a fresh injunction application seeking appropriate reliefs in respect of the property which is the subject-matter of the Will.
15. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)