

Item No.- 91
16.01.2025
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**FMA 852 OF 2024
with
I.A. No.: CAN 1 of 2024**

**Sri Rohit Kumar Patra & Anr.
Versus
Sri Pradip Bakshi & Anr.**

**Mr. Partha Pratim Roy,
Ms. Sarbananda Sanyal,
Mr. Samrat Dey Paul**

... for the appellants

Mr. Sayantan Chatterjee

... for the Respondents

1. In a suit for specific performance for an agreement of sale, an application for temporary injunction was taken out and pressed for an *ex parte ad interim* injunction on the premise that in complete defiance to the agreement, the defendants/respondents are contemplating to transfer, alienate and encumber the suit property.
2. It appears that the property originally belonged to Arati Rani Bakshi, who during her lifetime, made and published her last will bequeathing the property amongst her children. The two sons, who according to the will, gets all the residuary property to the exclusion of their sisters, entered into the agreement and the cheques totaling Rs. 25 lakhs were handed over to them. Apart from the same, Rs. 2 lakhs was also transferred through online transactions directly in the account of the aforesaid sons which till date, has not been returned nor any communication is made in this regard from their end.

3. It appears that an application for grant of probate to the said will upon the death of the said original owner was filed before the Court which was considered by the Single Bench as a deterrent in passing an *ex parte ad interim* order of injunction. According to the learned Judge, unless the probate is granted to the said will, the aforesaid two sons will not be entitled to the suit property. There appears to be a fallacy in this regard. In the event, the probate is granted being the beneficiary under the said will, the aforesaid two sons will get the property; on the other hand, in the event the probate is not granted, the property would be regarded to have devolved in accordance with the law of succession and in such scenario as well, the aforesaid two sons will inherit the share conjointly with their sisters. Once the agreement has been entered into, the only consequence that would follow in the event the probate is not granted that it would be restricted to the shares which the aforesaid two sons will inherit and shall not be construed to have divested their rights in its entirety. The moment the agreement has been entered into and earnest money has been paid, even though the cheques as shown in the said agreement is not encashed, does not absolve the aforesaid two sons from the responsibilities in carrying out their obligations thereunder.
4. Interestingly, in course of the hearing, the Counsel for the defendants/respondents submits that the parties decided not to continue with the probate case and infact, has abandoned the same which, if taken into account, shall render the ultimate finding made by the Trial Court in refusing to pass an *ex parte ad interim* order of injunction otiose or redundant. It is further informed to this Court that some portion of the property, being the subject matter of the agreement, has already been sold to a third party.

5. The intention to transfer, alienate and encumber the property is evident and imminent from the conduct of the defendants/respondents and if the entire property is transferred, it would cause irreparable loss and injury to the plaintiffs/appellants.
6. We, therefore, restrain the defendants/respondents from transferring, alienating and/or encumbering the portion of the subject property which had not been encumbered as on this date, in favour of a third party for a period of four months from date or until further order, whichever is earlier.
7. Since the defendants/respondents have entered appearance and have been served with a copy of application of stay containing the copy of the temporary injunction filed before the Trial Court as well as a copy of the plaint, they are permitted to file written objection to the application for temporary injunction pending before the Trial Court within two weeks from date; rejoinder, if any, shall be filed with a week thereafter.
8. The learned Judge in the Trial Court is requested to make endeavour to dispose of the application for temporary injunction within one month from the date of expiration of the period for exchange of affidavits.
9. In order to adhere the timeline for the disposal of the temporary injunction as indicated above, the learned Judge shall refuse the adjournments to either of the parties unless necessitated by unforeseen and unavoidable circumstances.
10. The learned Judge in the Trial Court, if necessary, shall prepone the date already fixed for the said temporary injunction so that the request as made hereinabove, is honoured and/or duly complied with.

11. With the aforesaid observations, the appeal being **FMA 852 of 2024** along with the connected application being **CAN 1 of 2024** are **disposed of**.
12. No order as to costs.
13. Urgent certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)