Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FMAT 410 of 2025
IA No: CAN 1 of 2025

Sri Arun Kumar Bhalotia
Vs.
Indu Bhalotia and another

For the appellant	:	Mr. Rachit Lakhmani, Mr. Siddhanth Makkar, Mr. Aditya Chakraborty
For the respondent no.1	:	Mr. Ambu Bindu Chakraborty, Mr. Pratap Kumar Yadav
For the defendant no.2	:	Ms. Pooja Sah
Heard on	:	28.10.2025
Judgment on	:	28.10.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out of a probate proceeding. In view of several arguable questions being involved, the appeal is admitted. On consent of the parties, the appeal is taken up for final hearing and disposal.

2. The plaintiff/appellant, claiming to be the executor of the last Will and testament of late Krishna Kumar Bhalotia, took out a probate

application which was initially consented to by both the sisters. However, the respondent no.1 subsequently challenged such consent and opposed the matter, thereby turning the probate proceeding contentious, resulting in a probate suit being registered.

3. In the said suit, the plaintiff filed an application for injunction as well as other reliefs. The nature of the injunction, *inter alia*, was that the respondent no.1 shall be restrained from transferring the shares of the estate of the deceased testator, in respect of which the respondent no. 1 is the nominee, as well as from alienating the dividends in respect thereof. In the injunction application, the plaintiff/appellant further prayed that accounts be submitted from June 01, 2021 till date in respect of all shares of the deceased by the defendant/respondent no.1 in which the latter was the nominee.

4. That apart, the plaintiff/appellant sought authorization to take over the possession and custody of the shares of the deceased of which the respondent no.1 was the nominee.

5. Learned counsel for the appellant submits that although the learned Trial Judge granted injunction in respect of alienation of the shares, the rest of the prayers were not granted.

6. It is submitted that in the event the estate is permitted to be dissipated by alienations and transfers by the respondent no.1, the final outcome of the probate proceeding might be rendered academic and infructuous.

7. Learned counsel for the respondent no.2 supports the contentions of the appellant and adopts those.

8. Learned counsel for the respondent no.1 submits that serious challenge has been thrown to the signature of the testator in the Will in the probate proceeding itself. That apart, it is contended that injunction has already been granted by the learned testamentary court in respect of transfer of shares and, as such, there is no scope of grant of any further relief.

9. Upon considering the rival contentions of the parties, we are of the opinion that mere restraint order in respect of the transfer of shares might not suffice, since, in the event the dividends derived from such shares are permitted to be transferred to some other account or alienated in any manner by the respondent no.1, the final outcome of the probate proceeding might be rendered fruitless to an extent. However, in respect of the prayer of the plaintiff/appellant to acquire possession and control of the shares in respect of which the respondent no.1 is a nominee, this Court is of the opinion that such prayer is more in the domain of an application for letters of administration within the contemplation of the Indian Succession Act and does not, *stricto sensu,* come within the ambit of an injunction application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The scope and ambit of the two provisions are different and, as such, such prayer was rightly not granted in the injunction application.

10. In view of the above discussions, FMAT 410 of 2025 is disposed of by modifying the impugned order to the effect that in addition to the injunction in respect of the shares already granted by the testamentary court, we grant further injunction restraining the respondent no.1 from alienating or dealing with the dividends derived from the shares in respect of the estate of the deceased, of which the respondent no.1 is a nominee, till disposal of the suit.

11. That apart, the respondent no.1 shall also file accounts in respect of the said shares in the trial court within four weeks from date, starting from June 01, 2021 till the date of filing such accounts.

12. It is made clear that nothing in the above order shall preclude the parties from filing an application for letters of administration. If so filed, the learned Trial Judge shall decide the same in accordance with law upon giving opportunity to the other parties to contest the same duly.

13. It is further clarified that the merits of the testamentary suit have not been gone into by this Court and it will be open to the learned testamentary court to decide all issues duly in accordance with law, independently of the observations made above, in the main testamentary suit.

14. CAN 1 of 2025 is accordingly disposed of as well.

15. There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

AD-04
TN