

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FMA 430 of 2025
With
CAN 1 of 2025

Sri Asis Chatterjee and Anr.
Vs.
Nilima Mukherjee and Ors.

For the appellants : Mr. Dhananjay Nayak, Adv.
For the private respondents : Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. Samrat Chakraborty, Advs.
For the respondent no. 7 : Mr. Subrata Bhattacharya, Adv.
Heard on : April 1, 2026.
Judgment on : April 1, 2026.

Sabyasachi Bhattacharyya, J.:

1. Affidavit of service filed today be kept on record.
2. Since a short question is involved in the appeal, the appeal is taken up for hearing along with the application.

3. The grievance ventilated before this Court is against the judgment of a learned Single Judge disposing of a writ petition bearing WPA 6344 of 2023, filed by the daughters of one Late Bhaktipada Chatterjee, complaining against the respondent authorities not making a reference as contemplated under Section 3H(4) of the National Highways Act, 1956 and having disbursed the amount of compensation to which Late Bhaktipada was originally entitled to, to the joint bank account of the present appellants, who are the sons of Late Bhaktipada.
4. The writ court, while disposing of the writ petition, directed the amount to be deposited with the appropriate authorities and a reference to be made under Section 3H(4) of the 1956 Act in view of the dispute having been raised in respect of the apportionment of compensation by the said daughters/writ petitioners.
5. Learned counsel appearing for the appellants submits that Late Bhaktipada had executed a Will in favour of the present appellants, a probate proceeding in respect of which is at an advanced stage of adjudication.

6. It is further argued that the writ petitioners/daughters suppressed the material facts of pendency of the probate proceeding as well as a criminal case initiated at their behest against the appellants while approaching the Writ Court. It is contended that the learned Single Judge overlooked the said material suppressions and passed directions for deposit of the amount with the appropriate authorities, despite the probate proceeding being at an advanced stage.
7. Learned counsel for the appellants places reliance on a judgment of the learned Single Judge of this Court in *Anjali Mullick vs. Mrityunjoy Dey & Ors.*, reported at (2004) 2 CHN 450, where the learned Single Judge substantially observed that since a probate proceeding was pending, the applicant, i.e. the propounder of the will, was entitled to step into the shoes of the testatrix for contesting a pending partition suit.
8. Drawing analogy from the said judgment, it is submitted that during pendency of the probate proceeding, the named executors in the Will of the original land-loser, being the present appellants, are entitled to be the custodians of the amount of compensation which was payable to the testator during his life time.

9. Learned counsel also cites *ABL International Ltd. and Anr. vs. Export Credit Guarantee Corporation of India Ltd. and Ors.*, reported at (2004) 3 SCC 553, for the proposition that complex and disputed questions of facts are generally not decided by the writ court.
10. Upon hearing learned counsel for the parties, this Court is of the considered opinion that the learned Single Judge adopted the correct approach in deciding the writ petition, for the following reasons:
11. Since a dispute has specifically been raised as to apportionment of the amount of compensation payable to the parties, who are admittedly the heirs of the original land-loser, namely Late Bhaktipada, within the contemplation of Section 3H(4) of the 1956 Act, it was the incumbent duty of the authorities to refer such dispute to the principal civil court having original jurisdiction. Apart from directing the matter to be so referred, the learned Single Judge also directed the money transferred to the joint account of the appellants with the appropriate authorities in terms of Section 3H(1) of the 1956 Act.

12. The arguments of the appellants, although at the first blush attractive, are not tenable in the eye of law. Section 211 of the Indian Succession Act, 1925, read in conjunction with Section 213 thereof, clearly indicates that although the property of a deceased person vests in the executor of his Will on his demise, such investiture is subject to Section 213, which specifically enumerates that an executor of a Will shall not be entitled to assert his rights vis-à-vis the property of the deceased in such capacity, i.e. in the capacity of an executor, unless probate of the Will is granted by a competent court.
13. Even going by the ratio of *Anjali Mullick* (supra), the facts therein were distinct and different from the present case. For the purpose of protecting the estate of the deceased, within the contemplation of Section 211 of the 1925 Act, the executor is competent to represent the estate of the deceased before any court of law in any civil litigation. However, on the strength of the Will, acting as executor/beneficiary, the Will cannot be given effect to in such capacity, in terms of Section 213 of the 1925 Act, prior to probate thereof being granted. Thus, at this stage, although the appellants, in the capacity of executor/beneficiaries, are entitled to protect the estate of the

deceased, the said principle does not permit the appellants to have the entire amount of compensation payable to the deceased testator to be credited to their accounts, thereby prematurely giving assent to legacy and distributing the assets of the testator among the beneficiaries of his Will prior to probate being granted, which would be quite contrary to the principle embodied in Section 213.

14. Moreover, since the apportionment of the compensation is disputed within the purview of Section 3H(4) of the 1956 Act, the appropriate course of action would be to direct the said disputes to be resolved first and in the interregnum, the amount to remain deposited with the appropriate authority in terms of Section 3H(1) of the 1956 Act.
15. Needless to say, such deposit will be subject to the outcome of the 3H(4) proceeding as well as the probate proceeding.
16. Be that as it may, drawing inspiration from the judgment of *ABL International Ltd. (supra)*, cited by the appellants themselves, such disputed questions of fact relating to the respective rights and titles of the parties to the compensation amount were correctly not gone into by the writ court but

relegated to the appropriate forum i.e. the principal civil court of original jurisdiction under Section 3H(4) of the 1956 Act.

17. Thus, there is no scope of interference with the impugned order.

18. Accordingly, the appeal fails.

19. Hence, FMA 430 of 2025 is dismissed on contest, thereby affirming the impugned judgment passed in WPA 6344 of 2023.

20. CAN 1 of 2025 is consequentially disposed of.

21. There will be no order as to costs.

22. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)