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 Supratim Bhattacharya

FMAT No. 226 of 2026
+
CAN 1 of 2026

Partha Sarathi Sen
Vs.
Dhruba Sen and another

For the appellant : Mr. Sourojit Dasgupta,
Mr. Aditya Kanodia,
Mrs. Shreya Trivedi, Advs.

For the respondent no. 1 : Mr. Srinjay Das,
Ms. Mou Ghosh Sen,
Ms. Jui Jana, Advs.

Heard on : 27.07.2026.

Judgment on : 27.07.2026.

Sabyasachi Bhattacharyya, J.:-

1. In view of the short questions involved, we take up the appeal for hearing along with the application.

2. In a probate application filed by the present appellant, the learned trial Judge refused to grant ad interim injunction in respect of creation of third-party interest with regard to the property which is the subject-matter of the Will, primarily on the ground that in view of the existence of an earlier registered Will in favour of the respondent no. 1, no injunction could be granted on the

basis of the subsequent unregistered Will, the probate of which has been sought in the instant proceeding.

3. Learned counsel for the appellant argues that the registration of a Will is immaterial for the purpose of grant of probate, in view of a Will not being a compulsorily registrable document.

4. Thus, the very premise of the impugned order, it is submitted, is erroneous in law.

5. Learned counsel for the respondent no. 1 argues that the appellant claims to be in possession of the property which is the subject-matter of the Will, which is allegedly under lock and key. In such view of the matter, it is submitted that even on the allegations made in the injunction application, it is the appellant who should be restrained by injunction.

6. Even otherwise, learned counsel for the respondent no. 1 submits that there is no reason as to why the appellant ought not to be restrained by an injunction/*status quo*.

7. Since no relief is sought against the proforma respondent no. 2, service of notice of the appeal and the application on the proforma respondent is dispensed with.

8. Upon hearing learned counsel for the parties, we find that the ground on which the ad interim injunction was refused is not tenable in the eye of law.

9. The learned Trial Judge observed that in view of Section 213 of the Indian Succession Act, 1925, no right as executor or legatee can be established until probate of the Will is granted, so the apprehension of transfer of the scheduled property by the respondent no. 1 on the strength of the Will of the year 2003, it was held, may not be taken into consideration. The learned

Trial Judge also took into consideration an earlier registered Will in respect of the self-same property.

10. Insofar as the first above ground is concerned, the learned Trial Judge failed to take into consideration the conjoint effect of Sections 211 and 213 of the Indian Succession Act, 1925. On a harmonious reading of the said provisions, it is evident that the estate of the deceased testator vests in the executor immediately on the death of the testator and, for the limited purpose of obtaining probate, it is definitely the executor who is empowered to institute a proceeding before the testamentary court.

11. It would be circular logic to say that even the right to obtain a probate is not acquired unless probate is granted. The fallacy of such logic is apparent.

12. Secondly, since a Will is not compulsorily registrable under the Registration Act or any other law, a registered Will does not have an edge over an unregistered Will as such, apart from the subtle difference that the (rebuttable) presumption of correctness of a registered document is slightly stronger. For the purpose of ascertaining competing overriding effect between multiple Wills of the same testator in respect of the self-same properties, it is the date of execution of the Will which matters. It is well-settled that the last Will and testament of the testator is the one which overrides the earlier Wills, registered or not. Thus, a *prima facie* case for grant of injunction was indeed made out by the appellant in the Trial Court, since, unless such injunction is granted in aid of the main relief sought in the probate application, the said application itself may be rendered infructuous before adjudication of the same.

13. Accordingly, FMAT No. 226 of 2026 is allowed on contest, thereby setting aside Order No. 2 dated June 19, 2026, passed by the learned Chief Judge, City Civil Court at Calcutta, in Probate Case No. 32 of 2026. The respondent no. 1 and/or his men and agents are restrained by an order of injunction from selling, transferring, alienating and/or creating any third-party interest in respect of the subject-property of the Will till the disposal of the temporary injunction application pending before the Probate Court.

14. It will be open to the respondent no. 1 to file his written objection to the injunction application as well as to the probate application itself, upon which the learned Chief Judge, at present acting as a District Delegate, shall convert the matter to a regular suit and designate a Court or take it upon himself to decide the matter accordingly as a contested probate suit.

15. Be that as it may, we make it clear that the above observations are tentative in nature and shall not be binding at any further stage either of the injunction application or the probate proceeding as far as the merits of the case are concerned.

16. CAN 1 of 2026 is also disposed of accordingly.

17. There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)