

(2011) 01 DEL CK 0080

In the Delhi High Court

Case No : CS (OS) 892 of 2007 and I.A. No's. 5790 of 2007, 6326 of 2007, 8117 of 2007, 8546 of 2007 and 4660 of 2010

Shri Karamjit Jaiswal

APPELLANT

Vs

Investec Trust (Jersey) Limited and Others

RESPONDENT

Date of Decision : 14-01-2011

Acts Referred:

Specific Relief Act, 1963 — Section 41
Succession Act, 1925 — Section 211, 212, 213, 214, 216

Citation : (2011) 180 DLT 15 : (2011) 122 DRJ 86

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Abhishek Singhvi and Rajeeve Mehra, Malini Sud and Deepak Khurana, for the Appellant; T.K. Ganju and Priya Deep, for Defendant No. 6, Shobhit Chandra, for Defendant No. 7, Arvind Nigam and Akshay Makhija, R.N. Karanjawala, Jasmine Damkewala, Saurabh Seth, Raghu, Akhil Sachar and Raghav Awasthi for Defendant No. 9, for the Respondent

Judgement

S. Ravindra Bhat, J.—The suit seeks permanent injunction, to restrain the first five Defendants (hereafter "the trustees") from inter alia dealing with the testate estate of Ladli Prasad Jaiswal (hereafter "the deceased"), of which they were trustees during his lifetime, and from initiating any legal proceeding in respect of it.; and also to restrain the eighth and ninth Defendants from supporting any such action on the part of the said trustees.

2. Briefly the facts are that the Plaintiff is son of the deceased, and the sole beneficiary of two wills, dealing with the estates of the deceased in Jersey and the British Virgin Islands. The first five Defendants were constituted as the deceased's trustees the deceased, who was a majority (51%) share holder in Jagatjit Industries Ltd (JIL) through a series of corporate holdings, and trusts. Of these, Hirgo Trading Ltd owned 1,225,000 GD Rs, representing 25,100,000 shares of JIL; that company is registered in British Virgin Islands, and administered by the first Defendant (Investec) as trustee of the deceased. Orissa

Holdings Ltd held about 1,000,000 shares in JIL; 60% of its shareholding was owned directly by the deceased, and 40% was held by Tresiles Trust Ltd, a private trust owned by the deceased, and also by Theodores, a trust company owned by the deceased. 5500 GD Rs in JIL were directly held by the deceased, in addition. The sixth Defendant the executrix of the deceased's two wills; the seventh Defendant is the deceased's wife; the eighth Defendant is the son of the deceased, and the ninth Defendant claims to be the legitimate son of the deceased. This legitimacy claim is the subject matter of a suit CS(OS) No. 650 of 2006, pending before this Court.

3. There are three proceedings pending before this Court; the first being Test Case No. 22 of 2006 for the grant of the letters of administration of the deceased's estate to the Plaintiff; the second, being Test Case No. 23 of 2006 filed by the sixth Defendant for obtaining probate of the wills; the third, being a suit CS(OS) No. 650 of 2006 instituted by the Plaintiff for declaration that the deceased had only two sons-the Plaintiff and eighth Defendant, and that therefore the ninth Defendant is disentitled to a share in the deceased's estate, in the event the Court declares the wills (of the deceased) to be invalid. The three suits are pending before this Court and are at an advanced stage of recording evidence.

4. The ninth Defendant filed objections to the grant of probate pending before this Court. He objected to the jurisdiction of this Court to grant the probate. The Court, by an order dated 21.4. 2006 in the probate case, (and the petition for grant of letters of administration) restrained the parties to the Suit from dealing with the estate of the deceased. This order is still in force. By another order dated 5.10.2007 in Test Case No 23 of 2006, the court held that it had the jurisdiction to proceed with the petition seeking probate of the wills.

5. The trustees had made a Representation before the Royal Court of Jersey on 4.8.2005, during the lifetime of the deceased, seeking directions in the matter of dealing with the trust properties. Initially, the Court had through its order restrained the said first five Defendants from instituting any action with regard to the said estate. However, by its order dated 8.5.2006 the Court removed the condition (imposed earlier) on the trustee Defendants of not initiating any proceedings with regard to the estate of the deceased.

6. The ninth Defendant had made a representation before the Royal Court of Jersey challenging the validity of the wills. In that case, the Plaintiff had filed objections on the ground of lack of jurisdiction of the Royal Court of Jersey. The Jersey Court, by its order dated 13.2.2007 ruled that this Court was the appropriate and convenient court to adjudicate matters with respect to the deceased's wills. However, since the ninth Defendant had informed that proceedings in India would take at least 5-6 years to reach completion, the Jersey Court in its order refrained from staying the proceedings initiated by the ninth Defendant. It however, did hold that if this Court determined the validity of the wills before it did, then it (the Jersey court) would be bound by such decision.

7. On the institution of the present suit, this Court had passed an interim order dated 17.05.2007 restraining the Defendants from dealing with the testate property in any manner. Despite this the trustees applied to the Royal Court of Jersey, on 22.05.2007, for permission to spend monies from the estate, and if necessary, to sell the GD Rs for the purpose of obtaining legal opinion and initiating legal proceedings. On these averments, the Plaintiff seeks a permanent injunction restraining the trustees from either themselves or through their directors, agents, nominees or assigns, dissipating, parting with, selling, transferring, or encumbering in any manner, any part of the estate of the deceased and also to restrain them from initiating any proceedings with respect to the estate till the disposal of the probate proceedings pending before this Court. A consequential injunction restraining Defendants 8 and 9 from supporting any such action of the trustee first to fifth Defendants is also claimed.

8. The Plaintiffs contend that the Defendants have sought permission from the Royal Court of Jersey to spend monies from estate, and to sell off the GD Rs of a holding company of one of the assets of the estate of in order to initiate legal proceedings with regard to the estate. This money and the GD Rs form a part of the deceased's testate estate. It is submitted that the legal proceedings for which the GD Rs are sought to be sold are likely to be very expensive and may result in the entire GD Rs being dissipated in litigation costs only. Neither the GDR should be sold nor the monies from the estate used for funding such litigation. The Plaintiffs say that the sale of these GD Rs is further likely to reduce the value of the remaining GD Rs, as they are likely to be purchased by a Competitor.

9. It is next argued that the trustees have no right to institute proceedings or any other action without the Plaintiff's consent, because, on the demise of the beneficiary, they ceased to have the rights or powers as trustees. The properties of the deceased are vested in Defendant No. 6, (who has been appointed the Executrix of the Wills) as per Section 211 of the Indian Succession Act. It is argued that the first five Defendants, as erstwhile trustees of the estate cannot take any action to deal with the estate without the permission of the Probate Court, i.e., this Court. Also, since this Court, in exercise of its jurisdiction has already made orders for the preservation of the estate, it (the estate) should not be dealt with in any manner in derogation of this Court's orders, and Defendants 1-5, 8, 9 should be enjoined from doing indirectly what they have been restrained from doing directly.

10. It is submitted that the actions that the trustees want to take ostensibly in the best interests of the trust are in fact not such that they are to be taken pending adjudication of the probate proceedings, and can await their outcome. The Plaintiff urges that since the first five Defendants are not parties to probate proceedings they are likely to disregard orders of the Court for preservation of the estate, contending that they are not bound by it. From their conduct, -in applying to the Royal Court of Jersey for permission to use the monies and GD Rs

of the assets of the estate for funding their litigation-urges the Plaintiff, it is clear that they are treating themselves as not being bound by the order of this Court.

11. The Plaintiff argues that the first five Defendants are not entitled to seek directions from any Court, except the Court of Probate, which is, this Court. It is urged that this Court has ruled that it possesses jurisdiction to continue with the probate proceeding. Furthermore, the Royal Court of Jersey too has ruled that this Court possesses territorial jurisdiction and is the appropriate and convenient forum. The Defendants are subject to the jurisdiction of this Court being possessed of the estate which is the subject matter of the wills. If the estate is dissipated during pendency of the estate, these proceedings would be rendered infructuous and meaningless. Further, nothing will be gained by the threatened action of the trustee Defendants. Even otherwise this Court has the closest and real connection with the matter as the deceased was domiciled in India and the applicable governing law is Indian Law and the estate is also *inter alia* ultimately an interest in JIL, an Indian Company.

12. The Plaintiff lastly argues that this Court has territorial jurisdiction over the subject matter of the Suit. The wills were executed at Delhi, by the deceased who had a fixed place of abode within the jurisdiction of this Court. The other Court where the validity of the wills were challenged had also ruled that this was the Court of territorial jurisdiction, and the most appropriate and convenient court for adjudication of the genuineness of the wills. The Plaintiff, the sole beneficiary of the wills, is a resident of Delhi. The sixth Defendant, the executrix appointed under the wills, and in whom as per the Section 211 of the Indian Succession Act the estate vests and without whose permission the estate cannot be dealt with, is also a resident of Delhi. In view of all these facts, submits the Plaintiff, the injunctive reliefs claimed have to be granted, to further the ends of justice, and protect the estate of the deceased, which can otherwise be dissipated. The Plaintiffs argue that the trustee Defendants cannot be prejudiced, as they have no personal interest in the said properties, and it is always open to them to seek appropriate directions for the preservation or protection of the said properties, from the court having jurisdiction, which is the probate court. In such event the concerned parties, having interest in the estate, i.e. the Plaintiff, as beneficiary, and the sixth Defendant, as executrix, would be notified, and their views would be considered.

13. The ninth Defendant alone has contested the proceeding; the trustees, against whom the reliefs are essentially claimed, have chosen not to appear, or contest the proceeding. The ninth Defendant does not dispute the facts pertaining to the pendency of various proceedings before this Court, or those in the Jersey Court. He also does not dispute the estate, or property, left behind by the deceased. He however, alleges that the wills which are the subject matter of two testamentary proceedings in this Court, are forged, and unenforceable. He claims that he is the son of the deceased, and has therefore, a right to a share in his estate and properties. Besides, the ninth Defendant argues that this Court is

not the court of competent jurisdiction. It is urged that the trustee Defendants 1-5 against whom the suit is primarily directed, are all residents of Jersey, and the estate is not situated in India.

14. The ninth Defendant urges that this Court is a forum non conveniens, since the estate in respect of which directions, and reliefs are claimed, are situated overseas, either in the British Virgin Island, or in Jersey. Therefore, the subject matter of the proceedings are outside the territorial jurisdiction of the court, and consequently, the equitable relief of injunction ought not to be granted in this case.

15. It is contended that the reliefs of injunction claimed against the first five Defendants and the eighth and ninth Defendants are barred under the provisions of Section 41 of the Specific Relief Act. It is also argued, besides that the Plaintiff has been mismanaging the affairs of JIL; consequently the court should decline to exercise its discretion and grant the reliefs claimed in this case.

16. The ninth Defendant urges that the Plaintiff is also disentitled to equitable relief, because the first five trustee Defendants were deliberately omitted and not impleaded in any testamentary proceeding, pending in this Court. It is urged, in addition that though the Jersey court had earlier ruled that this Court could go ahead with testamentary proceedings, yet, later, in 2007, it deleted the restrictions placed on the trustees, from dealing with trust properties, since it was necessary to take steps on their part, to ensure that there was no diminution in the value of the GD Rs.

17. On 15th February, 2010, the parties to the proceedings had stated that the suit could be heard without the necessity of oral evidence; they also submitted written synopsis. Later, the parties recorded an agreement - on 15th April, 2010 to dispense with the necessity of proof of documents in foreign judicial proceedings. The suit was, in these circumstances, heard on the existing pleadings and documents, relied on by both parties.

18. The pleadings and documents indicate that the following issues arise for consideration:

- (1)
- (2)
- (3)

Issue No. 1

19. This Court's jurisdiction to decide the probate and testamentary matter, was upheld, concededly, by the Royal Court at Jersey's ruling of 13-2-2007, in the following terms:

Accordingly we proceed on the basis that the Delhi High Court has jurisdiction to determine the Probate Action not only under Indian law but also for the purposes

of enforcement of any judgment of the High Court in Jersey under the rules of private international law. However, such jurisdiction is not exclusive because, as already mentioned, this Court also has jurisdiction both under domestic law and under the rules of private international law to rule on the validity of the Jersey will even in anticipation of any application for a grant of probate....

After holding that this Court had jurisdiction, the Jersey court considered expert evidence of the rival parties, on the question of appropriateness of whether to stay the proceeding before it. Mr. L. Nageshwar Rao, Senior Advocate had deposed (on behalf of the ninth Defendant) that proceedings before this Court would take a long time in being resolved, and that having regard to the claim in the legitimacy action, this Court was likely to stay the proceedings in the testamentary cases. The Plaintiff had, on the other hand, relied on the expert opinion in the form of affidavit of Justice Dr. A. S. Anand, former Chief Justice of India. The Jersey court preferred the expert opinion of Mr. Rao, and decided not to stay the proceedings before it.

20. This Court notices that only after a determination about its jurisdiction did it proceed with the probate proceedings in Test Case No 23 of 2006. All questions related to the validity of the wills are to be determined in this matter. It would be necessary to recall that the will was executed in Delhi by the deceased who had a permanent abode in Delhi. The Plaintiff who is the sole beneficiary of the will is also a resident of Delhi. The sixth Defendant, executrix appointed under the wills, and in whom (by reason of Section 211 of the Indian Succession Act) the estate vests and without whose permission the estate cannot be dealt with, is also a resident of Delhi. Even otherwise this Court has the closest connection with the matter as the deceased was domiciled in India and the applicable governing law is Indian and the estate is also *inter alia* ultimately an interest in JIL, an Indian Company.

21. In Stroud's Judicial Dictionary a "cause of action" is defined as the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the Plaintiff must prove in order to obtain judgment. The phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. In *Union of India and Others Vs. Adani Exports Ltd. and Another*, the Supreme Court observed that:

Cause of action as understood in civil proceedings means every fact which, if traversed, would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court. It is the bundle of facts which taken with the law applicable to them, gives the Plaintiff a right to relief against the Defendant. Each and every fact pleaded in the writ petition does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the *lis* that is involved in the case. Facts which have no bearing with the *lis* or the dispute involved in the case, do not give rise to a cause of

action so as to confer territorial jurisdiction on the court concerned.

22. In this matter, the wills were executed at Delhi, by the deceased who had a residence within the jurisdiction of this Court. The Plaintiff, the sole beneficiary of the wills, is a resident of Delhi. Defendant 6, the executor appointed under the wills, and in whom as per the Section 211 of the Indian Succession Act the estate vests and without whose permission the estate cannot be dealt with, is also a resident of Delhi. It is this clear that the cause of action arises in Delhi. This was emphasized by the Supreme Court in *Crystal Developers Vs. Smt. Asha Lata Ghosh (Dead) through LRs. and Others*, , in the following terms:

Sections 211, 212 and 213 bring out a dichotomy between an executor and an administrator. They indicate that the property shall vest in the executor by virtue of the will whereas the property will vest in the administrator by virtue of the grant of the letters of administration by the court. These sections indicate that an executor is the creature of the will whereas an administrator derives all his rights from the grant of letters of administration by the court. Section 214 states inter alia that no debt owing to a deceased testator can be recovered through the court except by the holder of probate or letters of administration or succession certificate. Section 216 inter alia lays down that after any grant of probate or letters of administration, no person other than such grantee shall have power to sue or otherwise act as a representative of the deceased, until such probate or letters of administration is recalled or revoked. Part IX of the Act deals with probate, letters of administration and administration of assets of the deceased. u/s 218(1), if the deceased is a Hindu, having died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable to such deceased, would be entitled to. u/s 218(2), when several such persons apply for letters of administration, it shall be in the discretion of the court to grant letters of administration to any one or more of such persons. Section 220 refers to effect of letters of administration. It inter alia states that letters of administration entitle the administrator to all rights belonging to the intestate. Section 221 inter alia states that letters of administration shall not render valid any intermediate acts of the administrator which acts diminish or damage the estate of the intestate.

23. The Royal Court of Jersey has also held that this Court is the forum conveniens and the court of territorial jurisdiction with regard to determination of the validity of the wills, and that the decision of this Court will be binding on it, if it is made before the Royal Court of Jersey determines the validity of the will. Therefore the Defendant's contentions with regard to lack of jurisdiction and forum conveniens have no merit; the issue is answered in favour of the Plaintiff, in the affirmative.

Issue Nos. 2 and 3

24. Only the ninth Defendant has objected in the above suit. Most of the said Defendant's objections are on the merits of the probate proceedings, and

therefore, not relevant with regard to this suit. The trustee Defendant Nos. 1-5, against whom the injunction is mainly sought, have not raised any objections.

25. No doubt, injunctive relief is discretionary. The testamentary cases dealing with the validity of the will and for the declaration that the Plaintiff and eighth Defendant are the only sons of the deceased, are at an advanced stage of recording evidence. If the trustee Defendants, in their capacities as trustees do initiate legal proceedings regarding the disposal of the estate, this could render the testamentary proceedings meaningless and infructuous. This is a real concern as the Defendants have applied to the Royal Court of Jersey for permission to use assets from the estate for the purpose of seeking legal opinion and initiating legal proceedings with respect to the estate. Now, the testate estate of the deceased comprised almost entirely of the shareholding and GD Rs of JIL. The trustees are not parties to the probate proceedings. They are not necessary parties, as they have no interest in the properties, nor can claim any rights in it. Furthermore, testamentary and probate proceedings are in rem, in which anyone claiming any manner of interest or title (in the estate, or as relatives of the deceased) can apply for participation. The trustees have not done so. Yet, they are in a unique position of having possession of the properties. If they were parties before the court in testamentary proceedings, or the probate proceedings, that court would have been in a position to exercise jurisdiction to preserve the estate or such part of it as it can exercise its jurisdiction or control over. However, such is not the case.

26. At one stage, the alleged mismanagement of Jagatjit Industries Ltd by the Plaintiff was the subject matter of proceedings before the Company Law Board, initiated by the eighth and ninth Defendants on the ground of oppression and mismanagement (of the Company). A compromise was arrived at by the parties to the suit, that is, the eighth and ninth Defendants and the Plaintiff. Now, even if the deceased is declared to have died intestate, the estate will vest only in his legal heirs of the deceased, i.e., his widow (seventh Defendant) eighth Defendant (subject to his being declared a legitimate heir by this Court), the ninth Defendant, and the Plaintiff. Now since a compromise has already been reached with regard to this issue by the interested parties, there is no need for the first five Defendants, who are merely trustees, and have no interest in the estate, to initiate such proceedings.

27. The court cannot help noticing that since the trustee Defendants are not parties to the probate proceedings, the orders of this Court, for preservation of the estate may be treated by them as not binding upon them. From the conduct of the Defendants in applying to the Royal Court of Jersey for permission to use the monies and GD Rs of the assets of the estate for funding their litigation, it is clear that they are treating themselves as not being bound by the order of this Court. It is also apparent that if they are allowed to continue with such actions, the proceedings pending before this Court, which were continued on the determination that this Court had jurisdiction to deal with these matters, will be

rendered infructuous and meaningless, as in either case-the wills being upheld, or intestacy, the possibility of dissipation of the estate would be real. It therefore becomes clear that the grant of an injunction against the Defendants can be an effective means to secure the ends of justice.

28. So far as the ninth Defendant's objection to the grant of relief, on the ground that it is contrary to the provisions of the Specific Relief Act is concerned, this Court notices that preventing someone from exercising his right to seek judicial relief is per se not permissible. However, an anti-suit injunction is an exception, which the courts, the world over, recognize where more than one coram jurisdiction exists. Several tests have been applied by the Courts for the grant of an anti suit injunction. These have been taken note of in the case of Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd., . The test adopted by the House of Lords in *Castanho v. Brown and Root (U.K.) Ltd and Anr* (1981) AC 557 was "to avoid injustice". A variation of this test was indicated, in *Amchem Products Incorporated v. British Columbia (Workers Compensation Board)*; 1993 21 SCC 24 which prescribed the test as being "the ends of justice." In *SNI Aerospatiale v. Lee Kui Jak and Anr* (1987) 3 All ER 510 the test was whether the foreign proceedings are "oppressive or vexatious". Though it was noted that the use of these words would imply a judgment on the character of the parties, and it was felt that "ends of justice" would be a more convenient test, however this test was not discarded in its entirety.

29. A different approach was taken in the case of *CSR Ltd v. Cigna Insurance Australia Ltd. and Ors.*; 146 A.L.R. 402 by the High Court of Australia used the words "oppressive and vexatious" in the sense that only if there is nothing which can be gained by them over and above what may be gained in local proceedings.

30. In *Modi*, the Supreme Court summarized the principles governing the grant of anti-suit injunctions. The relevant part has been extracted here as follows:

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:

(a) the Defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined the ends of justice will be defeated and injustice will be perpetuated; and (c) the principle of comity --respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained --must be borne in mind;

(2) in a case where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (*Forum conveniens*) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexations or in a *forum non-conveniens*;

(3) ...

(4) ...

(5) ...

(6) ...

(7) the burden of establishing that the forum of the choice is a forum non-conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same.

31. In this case, this Court's jurisdiction, has been determined and found. It has also been recognized by the foreign court, i.e. Jersey court. However, on its own evaluation of the timeline of resolution of litigations in this Court, that court decided not to stay its hands. It has also left the door or possibility of the trustees approaching it, for orders, to administer the subject matter of the testamentary proceedings before this Court, i.e the estate and properties of the deceased. This, despite awareness -by said trustees-of pending testamentary and probate proceedings, before this Court. If the said trustees really have any intention of taking effective and meaningful steps for preservation or protection of the properties nothing prevents their approaching this Court, for appropriate orders or directions, in the pending probate and testamentary cases. An injunction directing them not to deal with the property, in this respect, would not prejudice or hurt them. The court also discerns no interest, apart from the fact that they were trustees appointed by the deceased in respect of his overseas properties. They do not have any interest, in them, as the deceased was the beneficiary of the trust; his estate has succeeded and has interest in the trust properties. On the other hand, if an injunction against the Defendants is not granted, the ends of justice will be defeated to the extent that the Plaintiff has a right that the estate, remain untouched at least till the determination of the validity of the wills. That this Court is the forum conveniens and court of territorial jurisdiction is clear from the facts, and has been reiterated by various orders including the order of the Royal Court of Jersey. The ninth Defendant has also not been able to establish that this Court is forum non conveniens.

32. Applying the reasoning in *CSR Ltd v. Cigna Insurance Australia Ltd. and Ors.* 146 A.L.R. 402, with regard to the meaning of the words "vexatious and oppressive", it is clear that the proceedings in Jersey will be oppressive and vexatious in the sense that there is nothing, which can be gained by them over and above what may be gained in proceedings in this Court. This Court has also dealt with this issue in several cases. In *Pradyuman Overseas Ltd. v. Virgoz Oils and Fats Pte Ltd. and Anr.* (CS(OS) No. 2436/2008, decided on 27.01.2010), this Court disposed of an interim application for the grant of an anti suit injunction, relying on the Modi Case as well, on the ground that refusal to grant such an injunction against the Defendant who was seeking to enforce an arbitration clause in a unenforceable contract would compel the Plaintiff company to subject itself to the jurisdiction of a tribunal, which was very clearly not voluntarily agreed to by both parties. In another case, i.e. Board of Control for Cricket in

Board of Control for Cricket in India Vs. Essel Sports Pvt. Ltd. and Others, this Court used the test of "overlapping issues" to grant an anti-suit injunction against the Defendant. This test is used to determine whether the facts and issues in the instant suit and the suit to be initiated in the Court of foreign jurisdiction have substantially overlapping issues, such that the resolution of these issues and disputes in the Indian Court will substantially do away with the grievance of the Defendant which finds reflection in its foreign claim. Using this test in the instant factual matrix, it becomes clear that once the probate and other related proceedings are complete, there will be a resolution of most issues with regard to the affairs of the testate estate of the deceased of which the Defendants 1-5 are trustees of, and in relation to which they seek to initiate legal proceedings. This Court applied the Modi principles to hold that the Plaintiff would be put to the hardship and expense of contesting legal proceedings, which were clearly beyond jurisdiction, based on documents, which are not binding contracts, if the injunction was not granted. Here too, denial of relief would prejudice the Plaintiff in a similar manner, because the trustee Defendants, who have no discernable interest in the properties can secure orders for its ostensible administration or preservation, and charge the estate with costs that can be crippling on it, and effectively dissipate it. Further, the Plaintiff's interest in the estate will also be jeopardized since the trustee Defendants wish to use the assets of the estate of which he is a beneficiary, to cover their costs of litigation.

33. In view of the above, this Court is of opinion that these issues are to be answered in favour of the Plaintiff, and against the Defendants. Accordingly, the suit has to succeed, in terms of the reliefs claimed, the permanent injunctions sought by the Plaintiff shall therefore, issue against the Defendants. The suit is decreed in such terms, with costs payable by the ninth Defendant.