

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 16 of 2015

1. Smt. Sandhya Rani Pal,
W/O. Late Nani Gopal Pal.
2. Sri Ranjan Kumar Pal,
S/O. Late Nani Gopal Pal.
3. Sri Sanjoy Kumar Pal,
S/O. Late Nani Gopal Pal.
4. Sri Binoy Pal,
S/O. Late Nani Gopal Pal.
5. Sri Bijan Kumar Pal,
S/O. Late Nani Gopal Pal.

All are Resident of Village Hatipara,
P.O. Shalbagan, 799012,
P.S. Airport, District – West Tripura.

..... *Petitioners*

- Vs. -

Sri Anjan Kr. Pal,
S/O. Late Nani Gopal Pal,
Village – Hatipara, P.O. Shalbagan,
P.S. Airport, District : West Tripura.
At present residing at C/O Dulal Majumder,
East Bank of Jagannath Dighi,
Near Rabindra Sangha, P.O. & P.S. R.K. Pur,
District : Gomati, Tripura, Pin – 799120.

..... *Respondent*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioners : Mr. D. Saha, Advocate.

For the respondent : None.

Date of hearing &
delivery of
Judgment & order : 05.02.2015.

Whether fit for
reporting : No.

JUDGMENT & ORDER (ORAL)

This petition is directed against the order dated 22.01.2015 passed by the learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in T.S. (Partition) 06 of 2014 rejecting the application filed by the petitioners, who are defendants 1 to 5 before the learned Trial Court whereby their application for stay of the suit has been dismissed.

2. Briefly stated the facts of the case are that the respondent herein filed a suit for partition of the suit property and this suit is numbered as T.S. (P) 06 of 2014. In the said suit a written statement was filed by the defendants that the suit property had been willed to them by the owner and therefore, they were the exclusively in possession of the suit property. The defendants after filing of the suit filed a petition under the Succession Act in the Court of the Additional District Judge, Court No.3, Agartala praying that probate of the Will be granted. Thereafter, an application under Section 10 read with Section 151 of the CPC for stay of the suit filed by the respondent.

3. The admitted facts are that this partition suit was filed earlier and the application for probate was filed later. Section 10 of the Code of Civil Procedure provides that when a matter between the same parties is substantially in issue in subsequent proceeding then it is the subsequent proceeding which have to be stayed. The

prior proceedings cannot be stayed even if the prior proceedings are pending with a Court of inferior jurisdiction and the latter proceedings are pending before a superior Court. It is not the hierarchy of the Court which is to be taken into consideration, but the only question is which is the earlier proceedings between the parties.

4. The learned Trial Court has the jurisdiction to decide upon the validity of the Will. This Court in **CRP 59 of 2014 (Sri Sudhir Debnath vs. Smt. Kanai Bala Debnath & anr.)** has clearly held that in the State of Tripura the probate of Will is not necessary and therefore, the validity of a Will can be decided by a civil Court. The relevant observations are read as follows:-

"[6] A bare reading of sub-section 2 of Section 213 clearly shows that where a will executed by a Hindu, Buddhist, Sikh or Jaina is not executed within the territory of Bengal subject to the jurisdiction of the Lieutenant-Governor as on the first day of September, 1870 or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay and no part of the property is situated in any of these three areas then the will does not require to be probated. The natural consequences is that any Court of competent jurisdiction is, therefore, entitled to decide whether the will is genuine and has been validly executed or not."

5. In view of above, I am of the considered opinion that this application for staying the earlier legal proceedings is not at all maintainable and was rightly dismissed by the learned Trial Court.

6. Therefore, the petition is dismissed in limine.

CHIEF JUSTICE

sima