

3rd December, 2020
(D/L No.1)
(SKB)

C.O. 1343 of 2020
(Via Video Conference)

Ram Chandra Dutta
Versus
Arabinda Singha Roy and others

Mr. Supriyo Chattopadhyay,
Ms. Saswati Adhikary
... for the petitioner.

The petitioner has challenged an order dated 16th December, 2019 passed by the learned Civil Judge (Senior Division), 2nd Court, Howrah in Title Suit No.113 of 2010 renumbered as Title Suit No.893 of 2014. The petitioner is the defendant no.2 in the said suit.

Learned Counsel appearing for the petitioner submits that by an order dated 7th May, 2012 on an application filed by the petitioner, the learned Court below was pleased to stay the suit under Section 10 of the Code of Civil Procedure in view of previous suit pending between the parties. Counsel submits that in view of this order, the impugned order dated 16th December, 2019 could not have been passed adding the legal heirs of the defendant no.7 in a proceeding under Order 1 Rule 10(2) of the C.P.C. The counsel also takes the point of Order 22 Rule 4 of the C.P.C.

Counsel submits that the respondents have not been served.

On perusing the order under challenge, it is found that the learned judge permitted the legal heirs of the

defendant no.7 to be added to the partition suit on the ground that the defendant no.7 was impleaded as a party in the suit as a co-sharer and that the legal heirs of the defendant no.7 automatically become necessary parties to the suit upon the death of defendant no.7. Secondly, it is also found that between the orders dated 7th May, 2012 and 16th December, 2019 by which the suit was stayed, numerous orders were passed by the learned court below in the said suit which were not challenged by the petitioner on the ground which the petitioner has taken today namely, that there is an order of stay in the suit. The impugned order does not also reflect that the petitioner had taken the ground of the suit being stayed in May 2012.

This Court is of the view that the petitioner cannot pick and choose orders for challenge under Article 227 of the Constitution of India. The impugned order is a reasoned order.

C.O. 1343 of 2020 is accordingly dismissed without any order as to costs.

(Moushumi Bhattacharya, J.)