

27-01-2020
Court No.3
(AJ/Sandip)
SI/8.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE
C.O. 95 OF 2019**

**Tapan Kumar Das & Ors.
Vs.
Sankar Kumar Nandi & Ors.**

Mr. Bikramditya Ghosh,
Mr. Deborshi Dhar
 . . .For the Petitioners.

The opposite party nos. 1 to 5 are the decree holders of a decree passed in O.C. Suit No. 8 of 1992. The said decree when was put into execution gives rise to O.C. Execution Case No. 12 of 2010 before the learned Civil Judge (Junior Division), Alipurduar, District Jalpaiguri.

The petitioners in the said execution case have filed an application under Order XXIX Rules 97 and 98 of the Code of Civil Procedure for adjudication of their independent right, title and interest under Rule 101 thereof in respect of the properties described in the schedules appended to the the said application.

The petitioners in the said application contended inter alia that the decree holders in execution of the decree is trying to take possession the properties belonging to them.

The petitioners made a prayer for stay of all further proceedings of the said execution case pending decision of their said application under Order XXI Rules 97 and 98 of the Code registered as Misc. Case No. 05 of 2018 before the said Executing Court.

The learned trial Judge by a part of the order being order No. 90 dated November 1, 2019 allowed the said prayer of the petitioners.

The petitioners are challenging the other part of the said order whereby the learned Trial Judge has allowed the prayer of the decree holders/opposite parties for appointment of an Amin to identify the decreetal property.

Mr. Ghosh, learned advocate appearing on behalf of the petitioners submits that the learned trial Judge since has stayed all further proceedings of the execution case should not have allowed the prayer of the opposite parties for appointment of an Amin to determine the identity of the decreetal property.

It appears from the materials on record that the the petitioners in the application under Order XXI Rules 97 & 98 of the Code is raising the dispute regarding the identity of the decreetal property, therefore, the measures taken by the learned executing court for identification of the said property is absolutely justified as it is necessary to resolve the dispute so raised by the petitioners.

An order staying all further proceedings of a lis puts a halt to the final determination of it but such an order does not affect the jurisdiction of the Court to pass interlocutory orders aimed to resolve the matter in controversy before it.

This Court, therefore, does not find any illegality and/or infirmity in appointment of the said Amin.

The learned executing court is requested to take appropriate steps to get the report of the Amin in the record expeditiously.

It is clarified that the Amin shall conduct his business after putting the opposite parties on notice.

C.O. 95 of 2019 is disposed of with the above observation.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)