

S/L 11
18.01.2021
Court. No. 19
GB

C.O. 643 of 2020

Arindam Chattopadhyay & Anr.
Vs.
Mrs. Anita Lahiri & Ors.

(Through Video Conference)

*Mr. Prosenjit Mukherjee,
Mr. Saptarshi Chakraborty,
Mr. Arghya Kamal Das.*

...for the Petitioners.

None appears on behalf of the opposite parties despite service. Affidavit-of-service filed in Court today be kept with the record.

The petitioners have filed this revisional application being aggrieved by an order dated August 27, 2019, passed by the learned Civil Judge (Senior Division) Bishnupur, Bankura.

By the order impugned, the application under Section 10 of the Code of Civil Procedure filed in Title Suit No.49 of 2018 has been rejected. It is the contention of the petitioner that since the partition suit is the subsequent suit and a probate proceeding is pending in respect of the self same suit property, Title Suit No.49 of 2018 should be stayed.

The Contention of Mr. Mukherjee is that the petitioner applied for grant of probate in respect of the suit property, which was registered as Probate Case No.01 of 2005. The probate was not granted and the petitioner

preferred F.A. 352 of 2014 before this Court. The application under Section 10 of the Code of Civil Procedure was filed in Title Suit No.49 of 2018 with a prayer that till the disposal of F.A. 352 of 2014 the subsequent suit should be stayed as the self-same property was involved in both the cases.

The learned court below rejected the application on the ground that there was nothing on record to show the status of the first appeal and there was no impediment under the law for continuing with the title suit.

I do not find any irregularity and/or illegality in the order impugned, inasmuch as, it is a settled principle of law that if a property involved in a suit was also the subject matter of a probate case, then the suit could be proceeded with but no final decree could be passed until disposal of the probate case. Thus, the Title Suit No.49 of 2018 shall be proceeded with but, the final decree will not be drawn up until the final disposal of the probate case.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)