

21.12.2021
Ct. 21
D/L 4
ab

C.O. 760 of 2021
(Via Video Conference)

Polly Ghosh
-Vs-
Kalpana Dutta & Anr.

Mr. Abhirup Chakraborty,
... for the petitioner

Mr. Rajdeep Bhattacharjee,
... for the opposite parties

Being aggrieved by order of discharge of receiver by Civil Judge (Senior Division), 5th Court, Alipore, in Title Suit No. 23 of 2005 on 06.02.2021 the plaintiff /petitioner has preferred this application under Article 227 of the Constitution of India and Section 115 of the Civil Procedure Code.

The plaintiff has filed above mentioned Title Suit for partition, permanent injunction and decree for accounts against her mother and brother alleging that her father died intestate leaving behind the disputed property. She being one of the legal heirs she has been deprived of the income generated from the disputed property from where the defendants are running a Banquet Hall. Therefore she has prayed for appointment of a receiver in respect of the income of Banquet Hall.

The learned Court below had allowed the plaintiff application under Order 40 Rule 1 read with Section 151 Civil Procedure Code ex-parte and appointed a receiver.

The defendants in their written statement have alleged that Ranjit Dutta did not die intestate. In fact, he during his life time executed a will appointing his wife as sole executrix and his two children also beneficiaries. They had also filed a copy of the will.

Thereby, defendants has prayed for discharging the receiver and filed an application under Section 151 of the Civil Procedure Code. The learned Court below while considering such application held the plaintiff had obtained ex-parte order of appointment of receiver by suppressing about the probate suit and its present status.

Indeed I find the plaint and application under Order 40 Rule 1 read with Section 151 Civil Procedure Code filed by the plaintiff totally silent about existence of a will executed by her deceased father appointing her mother as sole executrix and about suit for probate being filed and which is being contested by her.

Having regards to the above facts, this Court finds the plaintiff/petitioner had indeed obtained ex-parte order of appointment of a receiver by suppressing the facts about probate suit and such suit being contested by her. She having come before the Court

without clean hands is not entitled to claim an equitable relief. Therefore, this Court does not find any illegality or material irregularity in the impugned order.

The revisional application is dismissed. Connected application, if any, stands disposed of.

Interim order, if any, stands discharged.

Accordingly **C.O. 760 of 2021 is dismissed.**

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied. There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)