

25.07.2022
Item No.10
Court No.18
AJ.

C.O. 2335 of 2018

Nagendra Nath Adak & Anr.
-Vs-
Saroj Kumar Adak, since deceased,
his heirs and legal representatives
Aparna Adak & Ors.

Mr. Jayanta Samanta,
Mr. Sudipta Maiti,
Ms. Pritikana Gantait.
.....for the petitioner.
Mr. Subrata Santra.
.....for the opposite parties.

Affidavit-of-service filed by the petitioner be kept with the record.

The plaintiffs/opposite parties treating the diary of their deceased elder brother Dr. Arun Kumar Adak as Will, applied for grant of probate of it before the learned Additional District Judge, Fast Track 2nd Court, Tamruk, District. Purba Medinipur being Probate Case No. 04 of 2012.

The petitioners are other two brothers of the deceased, having same status with the plaintiffs in the said diary.

The petitioners although got themselves added in the suit as defendants but they are supporting the grant.

The petitioners apprehending that the plaintiffs/opposite parties may not be vigilant

enough to get the said probate expeditiously, applied for their transposition to the category of plaintiffs from the category of defendants.

The learned Trial Judge by the order impugned being Order No. 43 dated May 29, 2018 has dismissed the said application on the ground that such approach should have been made by the petitioners at the time when they applied for addition.

If the said diary is treated to be a Will and the plaintiffs and the petitioners are executors of the said Will, there cannot be any difficulty in transposing the petitioners in the category of the plaintiffs, particularly when the petitioners are supporting the grant, rather the said transposition would constrict the space of objection to the grant.

The order impugned for the aforesaid reasons is set aside.

The cause title of the application for grant be amended on production of this order.

C.O. 2335 of 2018 is disposed of with the above observation without any 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.)