

20.06.2022
(D/L-10)
Ct.-18
(Susanta)

C.O. 4418 of 2019

Krishna Prasad Dhar & Ors.

-Vs-

Dhananjoy Dhar & Ors.

Mr. Pratip Kumar Chatterjee,
.... For the Petitioners.

Mr. Jayanta Bhattacharya,
Mr. Fazlul Haque,
.... For the Opposite Parties.

The defendants in a suit for partition being Partition Suit no. 108 of 2000 are the petitioners of the present application under Article 227 of the Constitution of India.

The said suit was decreed in preliminary form and upon acceptance of the Partition Commissioner's report, the said decree was made final on November 10, 2014.

The final decree was put into execution giving rise to the connected Title Execution Case no. 08 of 2015 before the learned Civil Judge (Senior Division), Kandi, District-Murshidabad.

The petitioners, at this stage, filed an application challenging the Partition Commissioner's report. The Executing Court, pending consideration of the objection to the said report vide order no. 19 dated August 4, 2018 stayed the further proceedings of the said execution case.

The Executing Court, however, subsequently by the order impugned being order no. 27 dated

September 25, 2019 *suo motu* recalled the said earlier order of stay.

Challenge to the Commissioner's Report after acceptance of it, particularly when the said report has culminated into a final decree, is a misconceived action; as such the Executing Court has not committed any error in recalling its said earlier order of stay.

The order impugned, therefore, does not call for any interference.

C.O. 4418 of 2019 is dismissed with the above terms 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.)