

Item-1. 24-03-2023

FMA 907 of 2019
CAN 4 of 2022

^{sg} Ct. 8

Milan Kumar Mukherjee, since deceased,
representative by his legal heirs, namely,
Anuradha Mukherjee, & Anr.

Versus

Ramkrishna Mukherjee, since deceased,
represented by his legal heirs, namely,
Kabita Mukherjee & Ors.

Mr. Arnab Roy, Adv.

Mrs. Sayani Ahmed, Adv.

Mr. Soumyadeep Mukherjee, Adv.

...for the appellants

Mr. Abhirup Chakraborty, Adv.

...for the respondents

The original plaintiff and the defendant were brothers. The present parties are all the legal heirs and representatives of the original parties to the suit.

The appeal is arising out of a judgement passed by the learned Trial Judge in connection with an application for appointment of a Receiver. It was alleged that the properties are mismanaged and the rents collected by one of the brothers are not accounted for. During the pendency of the partition suit, a probate proceeding was initiated. However, in the partition suit, the plaintiff is contesting the probate proceeding and we have been informed that the said proceeding has been marked as Contentious Cause.

Because of the fact that the plaintiff is contesting the probate proceeding, he refused to joint the appellant in filing the application for grant of probate. The original executor died, as a result whereof, the substituted legal heirs of the appellant filed an application for conversion of the probate proceeding into a Letters

of Administration.

We have been informed that the said proceeding is pending. The issue raised is whether the Receiver appointed in the partition proceeding can also act as an Administrator Pendente Lite in the probate proceeding. The said issue may not be germane in view of the fact that so long the Letters of Administration are not granted to the legal heirs of one of the executors, the appellant cannot deal with the said property on the basis of the probate. However, a Receiver is appointed by the learned Trial Court with the following directions:

- i) Collect the rent from the tenants for each month;
- ii) Open a bank account and deposit the amount collected from the tenants;
- iii) Furnish accounts positively by 25th of each exceeding month before this court;

In addition to the aforesaid, we direct the Receiver to defray all expenses for the maintenance of the property and payment of all statutory dues of the said property. He will also act as Administrator Pendente Lite insofar as, the Letters of Administration proceeding is concerned. The probate proceeding is converted to one of Letters of Administration and the said application pending before the learned Trial Court is allowed.

In view of the decision of the Hon'ble Supreme Court in *Balbir Singh Wasu vs. Lakhbir Singh*, reported in (2005) 12 SCC 503 (paragraphs 4 and 6), both the partition suit and the Letters of Administration are required to be heard together. The Letters of Administration shall be heard first.

The learned Trial Judge is directed to pass peremptory

directions with regard to procedural matters in order to make both the Letters of Administration and the suit ready for hearing and thereafter, shall proceed as expeditiously as possible to dispose of the pending proceeding in terms of this order without granting any adjournment to either of the parties unless it is unavoidable.

In view thereof, the impugned order stands modified to the aforesaid extent.

The appointment of the Receiver is co-terminus with the disposal of the Letters of Administration.

The Receiver is directed to take immediate steps for collection of rents and maintain proper accounts. The Receiver is also directed to file quarterly accounts in the pending partition suit upon prior service to the parties.

With the above directions, the appeal and the connected application stand disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)