

Item No.13
18.12.2023
Court. No. 19
GB

C.O.1238 of 2023

Syed Hossain Ali & Anr.
VS
Kamruneesa Syed & Ors.

*Mr. Uday Sankar Chatterjee,
Mr. Suman Sankar Chatterjee*

...for the Petitioners.

This Court does not find any reason to interfere with the order impugned.

The plaintiffs claimed 1/3rd share in the amount lying in the bank accounts of the deceased. The court was of the view that during the pendency of the suit, the minor children of the deceased, i.e., the defendant nos.2 and 3 should not suffer. Hence, their mother, the defendant no.1, was allowed to withdraw 1/4th share from the entry no.3 of the schedule of the plaint, which is the money lying with the Bank of Baroda. The schedule specifically states that the plaintiffs have 1/3rd share in the said amount.

Mr. Chatterjee's contention that the defendants should have filed an application under Order 39 Rule 4 of the Code of Civil Procedure and prayed for variation, modification or setting aside of the order of ad interim injunction, is not accepted by this Court. The defendants prayed for invocation of the extraordinary power of the court with a further prayer to allow them to withdraw 1/4th of the amount lying in Bank of Baroda, which is entry no.3 in the schedule. Such power was exercised for the ends of justice.

The other contention of Mr. Chatterjee that the suit will become infructuous, is also not accepted as there are other entries in the schedule consisting of other bank accounts which are subject matters of the suit and the plaintiffs have all through claimed only 1/3rd share in each of these entries. The plaintiffs have not denied the claim of the defendants.

The learned court, upon noting that a criminal proceeding is pending against the defendant no.1, took into consideration the welfare of the minor daughters and allowed withdrawal of the said amount subject to the condition that the defendant no.1 shall reimburse the amount, subject to the final outcome of the suit. The shares claimed by the plaintiffs have been protected.

As this suit is with regard to the claim of the parents in the property of their son, this Court is of the view that the suit should be expedited and disposed of within two years from the date of communication of this order.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)