

29.11.2023
Item No.13
Court No.18
AJ.

C.O. 3137 of 2022

Hifijur Rahaman @ Bobby Mondal
-Vs-
Md. Faijullah Mondal & Ors.

Mr. Arif Ali.
.....for the petitioners.

Mr. Sambhunath De,
Mr. B.K. Samanta.
.....for the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for partition and is directed against the order dated August, 02, 2022 passed by the 2nd Court of the learned Civil Judge (Senior Division) at Malda in Case No. 218 of 2019 (Partition).

The learned Trial Judge by the order impugned has dismissed an application under Section 10 of the Code of Civil Procedure filed by the petitioners praying stay of all further proceedings of the connected suit during the pendency of a Second Appeal before the High Court being SAT 191 of 2019.

An appellate decree of permanent injunction restraining the petitioners from making any permanent construction over the suit property or changing the nature and character of it until partition of the said suit

property is under challenge in the said Second Appeal.

The issues to be decided in the partition suit are not directly or substantially issues decided in the former suit from which the said second appeal has arisen, besides the outcome of the said appeal has no bearing on the decision of the partition suit.

The learned Trial Judge, therefore has not committed any error in rejecting the application of the petitioners, as such the order impugned does not call for any interference.

C.O. 3137 of 2022 is dismissed 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.)