

Item No. 31
04.12.2023
Court. No. 19
GB

C.O. 3779 of 2023

Bela Mukherjee
Vs.
Suparna Mukherjee & Ors.

Mr. Ayan Kumar Boral

...for the Petitioner.

This Court does not find any reason to interfere with the order impugned. By the said order, the learned Civil Judge (Senior Division), 9th Court at Alipore, District – 24 Parganas (South), fixed the hearing of the application for stay filed by the defendant nos.1 and 2, praying for stay of all further proceedings in the suit, for adjudication.

According to the defendant nos.1 and 2, they came across a Will left behind by their father late Hemanta Mukherjee, in respect of his undivided half share in the suit property. The property was left to the defendant nos.1 and 2 and no provision for the married daughter, Sudhesna Banerjee, defendant no.3 was made in the Will.

The learned advocate for the petitioner submits that when there is an admission in the written statement that the defendants, as heirs of Hemanta Mukherjee have undivided half share in the suit property and the other half share belongs to the plaintiff, further adjudication of the suit is not required. The suit can be decreed by passing a judgment on admission.

This Court finds that the application for stay has been filed with specific averment that during the continuation of the suit the defendant nos.1 and 2 came across the Will of late

Hemanta Mukherjee, by which late Hemanta Mukherjee had bequeathed his undivided half share in the suit property to his daughters, defendant nos.1 and 2. No provision was made for the defendant no.3 (his married daughter). Hence the defendant Nos.1 and 2 prayed for stay of the partition suit, till disposal of the probate proceedings.

Thus, in my opinion, unless the said application for stay of the suit is decided first, the question of deciding an application for judgment on admission would not arise. The application will become infructuous. The order impugned does not call for any interference.

Accordingly, the revisional application is dismissed.

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

(Shampa Sarkar, J.)