

08.07.2024
Item No.20, DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 2371 of 2024

with

C.O. 1822 of 2024

Akhikana Baidya

-Vs-

Sanchayan Biswas & Ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder.
...for the petitioner.

Mr. Subrata Dutt.
...for the opposite parties.

These two applications under Article 227 of the Constitution of India since are arising out of the selfsame suit, are taken up for analogous hearing and disposal.

The petitioner is the named executor of the alleged last Will and Testament of her mother Usha Rani Biswas.

The petitioner had applied for grant of probate of the said Will which became contentious on the objection being raised by the opposite parties. However, the petitioner's application for grant of such probate was dismissed, aggrieved thereby, the petitioner has preferred the First Appeal being F.A. No. 144 of 2018, the said appeal is pending.

The opposite parties to the revisional applications, in the meantime, have filed a suit for partition being Title Suit No. 559 of 2020 pending before the 7th Court of the learned Civil Judge (Senior Division) at Alipore, District : 24-Parganas (South).

The petitioner in the said partition suit had filed an application under Section 10 of the Code of Civil Procedure praying stay of all further proceedings of it till the disposal of the said First Appeal.

The learned Trial Judge by the order dated April 25, 2024 has dismissed the said application. The said order is under challenge in C.O. 1822 of 2024.

In the partition suit, the petitioner sought adjournment on the date fixed for cross-examination of the P.W.1 on the ground of pendency of the aforementioned revisional application.

The learned Trial Judge by the order dated June 25, 2024 has refused to grant such adjournment and has closed the evidence of the P.W.1. The said order is under challenge in C.O. 2371 of 2024.

The lines of succession to the estate of the testator would certainly be governed by her Will subject to the grant of probate of it but pending such grant, the further proceedings of the suit for partition filed by the heirs of the testator entitled to succeed her estate, in the event of intestacy, cannot be arrested altogether, particularly when the prayer of the executor for such grant has already been refused by the learned Trial Judge.

Therefore, the order impugned dated April 25, 2024 is set aside. Notwithstanding the pendency of the said First Appeal, the partition suit shall proceed, but no final decree shall be drawn up without the leave of this Court.

Law is well-settled that the pendency of a revisional application by itself, cannot operate as stay of

further proceedings of a suit, as such the order dated June 25, 2024 though does not suffer from any material irregularity but for the ends of justice, the petitioner is permitted to cross-examine P.W.1 for one day, **subject to payment of costs of Rs. 30,000/-** to the plaintiffs/opposite parties.

This Court is informed that **tomorrow** (09.07.2024) is a date fixed in the suit.

Tomorrow, P.W.1 shall make himself available for the cross-examination by the defendant/petitioner. In the event, the said witness fails to make himself available for such cross-examination, his evidence shall be expunged from the record.

The learned Trial Judge shall allow the defendant/petitioner to cross-examine the P.W.1 tomorrow but the petitioner must conclude the said cross-examination on the said date itself. In the event the petitioner fails to do so, the evidence of the said witness shall stand closed.

Tomorrow, the learned Trial Judge shall not entertain the prayer of the parties for any adjournment.

C.O. 2371 of 2024 and C.O. 1822 of 2024 are thus disposed of.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)