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C.O. 3871 of 2024

Satinath Siddhanta
Vs.
Smt. Snigdha Mukherjee

Mr. Sourav Sen
Ms. Subhangi Bhattacharya
Ms. Adrisnata Chakraborty ...for the Petitioner

Mr. Anit Kumar Rakshit
Md. Shakeel Khan
Mr. Jane Alam
...for the Opposite party

Learned counsel for the petitioner submits that the opposite party herein being the plaintiff filed Title Suit no. 43 of 2017 against the present petitioner with a prayer for partition of the suit property. The said partition suit was decreed in preliminary form and thereafter, the final decree proceeding has been initiated and the partition commissioner has already submitted his report. The last order dated 2nd April, 2025 shows that the Trial court has fixed the next date for examination of partition commissioner.

In the meantime, the petitioner herein as defendant preferred an application for granting stay of the final decree proceeding in the aforesaid partition suit on the ground that the petitioner had already preferred an application for grant of probate of the will in respect of self-same suit property before the appropriate forum and the same has been numbered

as Will Probate case no. 9 of 2022 before the court of learned Civil Judge, Junior Division, Kalna.

Learned Trial court in session of the partition suit, by the impugned order dated 10th September, 2024, rejected the petitioner/defendant's prayer for stay on the ground that the preliminary decree has already been passed by this court and share of the parties already declared, only the allotment of shares of the suit property is remaining and in such circumstances, the final decree proceeding of the partition suit cannot be stayed.

Being aggrieved by the aforesaid order, learned counsel for the petitioner submits that the court below acted illegally and with material irregularity in passing the impugned order on a mis-conception of law and fact and he has totally misconstrued the scope of the suit and thereby entering into a domain of surmise and conjectures. Accordingly, he prayed for setting aside the order impugned.

Mr. Rakshit, learned counsel for the opposite party raised objection and contended that the partition suit is pending for a considerable period of time since 2017 and after passing the preliminary decree, the defendant/petitioner has come up with a new plea to drag the proceeding. However, in his usual fairness, he submits that a direction may be given to the court below for early disposal of the

probate case being no. 40 of 2011. He further submits that in the said probate suit, the opposite party herein has entered appearance and has filed objection and as such, it has become contentious.

It has been urged before me that the suit schedule property is the subject matter of dispute in the partition suit as well as probate proceeding. The jural relationship among the parties inter se has been decided in the preliminary decree. However, the decision of probate proceeding on the question of proof of will have a direct impact on the partition suit. The decision of partition suit would also act as resjudicata in the probate proceeding. In such a situation, the court below ought to have stayed the partition proceeding till disposal of probate proceeding. Therefore, the order impugned which pertains to refusal to grant stay of partition proceeding is hereby set aside as it suffers from impropriety and perversity.

In such view of the matter, C.O. 3871 of 2024 is hereby disposed of with a direction upon the learned District Judge, Purba Bardhaman either to take up the probate proceeding which has become contentious, in his own file or to any other competent court to dispose of the probate proceeding in either case, preferably within a period of six months from the next date of hearing. Till disposal of the probate

proceeding, the final decree proceeding of the partition suit shall remain stayed.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)