

21.04.2026  
Item No.20  
Ct. No. 30  
Aloke

**CO 289 of 2026**

**Prity Agarwalla  
Vs  
Ankit Agarwalla & Ors.**

Mr. Pratyush Patwari  
Mr. Shivam Dudhwewala  
... for the petitioner

Mr. Surajit Nath Mitra, Id. Sr. Adv.  
Mr. Shounak Mukhapadhyay  
Mr. Jishnu Dutta  
Mr. Anand Dwivedi  
Mr. Shivam Pathak  
... for the respondent nos. 1, 2 and 3

1. The revisional application has been preferred praying for transfer of Title Suit No. 442 of 2022 pending before the learned Civil Judge (Senior Division), 2<sup>nd</sup> Court, Krishnagar, Nadia to the Court of learned District Judge, Nadia.
2. It is the contention of the petitioner that the Title Suit is a suit for partition which has been initiated by the petitioner herein after the Probate application has been preferred by the opposite parties herein.
3. The petitioner submits that as some of the parties and some of the properties are common the Title Suit should be heard along with original suit for probate by the District Judge as the District Judge is the only Court which can hear a contested probate suit.

4. The petitioner has relied upon the judgments in **Nirmala Devi vs. Arun Kumar Gupta & Ors.** reported in **2005 (5) Supreme 145** and **Balbir Singh Wasu vs. Lakhbir Singh & Ors.** reported in **2005 12 SCC 503**.
5. Learned senior counsel appearing for the opposite parties has countered the said judgments by placing the judgment of the Supreme Court in **Ravinder Nath Agarwal vs. Yogender Nath Agarwal & Ors.** reported in **(2021) 15 SCC 282**.
6. This Court takes into consideration the judgments relied upon by the petitioner herein.
7. It appears from the record that on an application made by the opposite parties herein under Section 10 of the CPC before the trial Court, the partition suit being the subsequent suit has been stayed till disposal of the probate suit.
8. On hearing the learned counsels for the parties and on perusal of the materials on record and the judgments relied upon, this Court is of the view that for consideration and to decide the issue in a probate proceedings and the issues to be decided in a partition suit are entirely different. There is absolutely

no connection or similarity in the proceedings of the two suits.

9. Considering the nature of the two suits, the probate proceeding is to be heard first. It is only when the Will is probated that the right of the beneficiaries in the Will will accrue and the same will then be placed for consideration in a suit for partition. As such, in no way can a probate proceeding and a suit for partition be heard together.
10. Considering the fact that the law requires the probate proceeding to be decided first so as to the claimant/beneficiaries accruing their right in the property, only then they can claim their right in the suit for partition.
11. Deciding a probate proceeding prior to suit for partition is mandatory and, as such, the trial Court rightly stayed the Title Suit till disposal of the probate proceeding.
12. Considering the said facts, this Court finds no reason to direct that a suit for partition shall be heard along with the probate proceeding.
13. Prayer for transfer of the Title Suit is accordingly rejected.
14. **The civil revision is disposed of** with the direction that the learned District Judge shall proceed to dispose of the probate suit expeditiously.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Shampa Dutt (Paul), J.)**