

ORDER dt.03/12/21

The case is taken up for passing order as regards to the O.P's petition dt.22/01/21 praying inter alia to dismiss the case in limine as the initial stage alleging not maintainable. On the ground that the material fact is subjudice, as the original testator of the property executed the Will in favour of the O.P and made a trust in favour of the petitioner. It is contended in their W.S that the O.P filed application for obtaining probate but the Ld. Judge 10th Bench, City Civil Court rejected the application for probate against which appeal preferred by them before the Hon'ble High Court and same is pending for disposal. It is further contended that they have filed suit for declaration of Title and decree for permanent declaration on 31/05/19 prior to the filing of this case, being filed on 24/07/19 touching the same subject matter directly and substantially in issue and accordingly prayed for stay of all proceedings and lastly prayed for dismissal of the plaint.

No written objection filed against the petition by the petitioner but orally raised strong objection and referred the latest amendment of Presidency Small Cause Court Act.

Admittedly this is a proceeding not a suit so question of keeping stay of subsequent suit u/s 10 of the CPC does not arise.

Filing of appeal does not itself cause a stay of all other proceedings in respect of the same property or any part thereof. It is admitted by the O.P themselves that their original probate application has been dismissed on contest against which they have preferred appeal before the Hon'ble Court which is pending. It is a separate proceeding u/s 41 of the P.S.C. COURT Act. And as per amended portion (West Bengal amendment) section 47 of said Act which is the only provision for keeping stay of any proceedings u/s 41 of the said Act has to be filed

within 21 days from the date of service u/s 42 of a summon on the occupant or where the summon has not been duly served from the date of knowledge. In this proceedings the O.Ps have filed their written statement / written objection on 30/09/19 and appeared on 25/07/19 and this petition filed on 22/01/21 ie the long after the statutory period. Accordingly cannot be entertained and rejected.

To 19/01/22 for evidence.

D/C by me

Judge, 4th Bench

Judge