

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 1920 OF 2009

ANIMESH RANJAN & ORS.

.....

APPELLANT

VERSUS

RAI CHANDI NATH SAHAY & ANR.

.....

RESPONDENT

**WITH
CIVIL APPEAL NO. OF 2010
ARISING OUT OF SLP(c) No. 36252 of 2009**

O R D E R

1. Leave granted in SLP(C) 36252 of 2009.
2. We have heard the learned counsel for the parties at length.
3. In the light of the fact that the appellants herein had been granted Probate of the Will dated 3rd January, 1983 and the rival Will set up by the respondents has been ignored, we find no balance of convenience in favour of the respondent. Certain legal issues have been raised with regard to the right of the appellants to alienate the property in contravention of the specific bar imposed by

the Will but we find that this matter will have to await a decision in the suit which is pending before the trial court. However, keeping in view the facts of the case and to balance the equities on both sides it is appropriate that as the appellants have not been able to act upon the Will for almost 27 years, we direct that the appellants be permitted to complete the building in question.

4. Mr. Shyam Diwan, the learned senior counsel for the appellant, further informs us that 32 flats in all have been carved out in the building for sale and whereas 19 have been agreed to be sold, the balance 13 flats will be completed but will not be sold or any agreement to sell executed in respect of these till further orders. Mr. Diwan further states that in case sale deeds are executed with respect to those 19 flats a clause in the sale deed would be incorporated highlighting that the matter was subjudice and the parties would be bound by the outcome of the proceedings in the civil suit.

5. In the light of the fact that the matter has been pending since long in one forum or the other, we direct the trial court to take a decision in the suit within a period of six months from today and in case it finds that either one or the other party is procrastinating in the

disposal of the suit the trial court will ensure a speedy trial, by resorting to the legal provisions available in the Code of Civil Procedure.

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6. The order of the High Court shall be substituted by our order in C.A. No.1920 of 2009. The matter is disposed of accordingly.

NEW DELHI
APRIL 08, 2010.



