

19.08.2021
S/L No.22
KS

(Via Video Conference)

C.O. 788 of 2021

Madhusudan Chandra & Ors.

-Vs.-

**Sri Sri Radha Krishna Yugal Murti, represented by Joy
Gobinda Dey**

Mr. Soumik Ganguli

Mr. Ritram Chowdhury

Mr. Sourat Nandy

Ms. Sampa Ghosh

.....For the Petitioners

The present challenge is directed against an order passed by the executing court in respect of an eviction decree obtained by the decree holder-opposite party against the petitioners, whereby the Court below rejected an application filed by the petitioners under Section 151 of the Code of Civil Procedure praying for a declaration that the decree passed in the suit is void.

However, the Trial Court was justified in rejecting such application, since it is beyond the scope of the executing court to go behind the decree, more so when there is doubt as to whether the decree can be said to be vitiated as void, after having been affirmed in appeal, merely on the ground of violation of a status

quo order passed in a different suit for partition against the parties, which is binding on the parties but not on the court.

In any event, the Executing Court did not have jurisdiction under Section 151 of the Code of Civil Procedure to decide the issue raised therein.

Accordingly, C.O. 788 of 2021 is disposed of without interfering with the impugned order. However, it is made clear that this order will not preclude the petitioners from taking out an appropriate proceeding canvassing the point of nullity of the decree in connection with the execution case and/or otherwise in accordance with law, if maintainable.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Sabyasachi Bhattacharyya, J.)