

20th July,
2021
(AK)
23

C.O. 1217 of 2021

**Dilip Kumar Nath and others
Vs.
Abdul Kazi Mondal and others**

(Via video conference)

Mr. Surya Prasad Chattopadhyay
Mr. Arjun Samanta
...For the Petitioners.

Despite service, none appears for the opposite parties.

Affidavit-of-service filed in court today be kept on record.

By the impugned order, the petitioners' second execution case, filed pursuant to a liberty granted by this court while upholding an order of dismissal of the previous execution case on technical grounds, was rejected by the executing court at the outset.

Without giving an opportunity of hearing to the parties on the merits of the execution case, the executing court, by the impugned order, came to a finding that the decree-holders failed to establish their case of dispossession from the decretal property.

However, such rejection, on the ground of maintainability, at the outset is not in accordance with law, since the decree sought to be executed specifically

records the decree-holder's possession of the decretal property, which creates a presumption of such possession at the time when the decree was passed.

Hence, no further question of the petitioners establishing their case of prior possession at the time of the decree can arise. Hence, the impugned order was passed without jurisdiction.

Accordingly, C.O. 1217 of 2021 is allowed, thereby setting aside Order no. 5 dated February 17, 2021 passed by the Civil Judge (Junior Division), Second Court at Krishnanagar, District-Nadia in Title Execution Case No. 2 of 2020 and directing the executing court below to hear out the said execution case afresh on its merits.

While deciding the said execution case on merits, the executing court shall not be influenced by any of the observations made in the impugned order.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)