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Ct. 18
04.10.2021

C.O. No. 1791 of 2021
(Via Video Conference)
Shri Sanjay Bothra (HUF)
Vs.
Shri Atish Ghosh & Ors.

Mr. Partha Pratim Roy,
Mr. Shubhm Ray,
Mr. Dipankar Saha,
Mr. Subham Das ... For the petitioner.
Mrs. Sohini Chakraborty,
Mr. Supriyo Ghosh ... For the opposite parties.

Affidavit of service filed on behalf of the petitioner in Court today be kept with the record.

The executing Court by the order impugned dated September 27, 2021 has allowed an application filed by the opposite party nos. 1 and 2 under Order XXI Rule 16 of the Code of Civil Procedure thereby permitting them to execute the decree for execution of which Title Execution Case No. 25 of 2009 was filed before the 9th Court of learned Civil Judge, (Senior Division), Alipore, District – 24 Parganas (South).

The petitioner is not a party to the said execution case but he is objecting to the prayer of the opposite party nos. 1 & 2 to execute the decree in place and instead of the original decree-holder on the ground that he has acquired interest in respect of the suit property from the original decree-holder who has, after obtaining possession of the suit property in execution of the said decree, has put him into possession.

Mr. Partha Pratim Roy, learned advocate appearing on behalf of the petitioner submits that the said execution case being fully satisfied cannot be re-opened affecting the

right of the petitioner, acquired post execution of the said decree.

The issue sought to be raised by Mr. Roy is not a valid consideration in deciding an application under Order XXI Rule 16 of the Code, particularly when, the question as to the full satisfaction of the decree under execution is in dispute. The said issue can be well addressed at any subsequent stage of the said execution case.

The order impugned, therefore, does not call for any interference.

It is made clear that this Court has not gone into the merit of the claim of the petitioner.

C.O. 1791 of 2021 is disposed of with the above observations without any order as to costs.

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

(Biswajit Basu, J.)