

AD. 1.
August 3, 2021.
MNS.

C. O. No. 3624 of 2015
with
CAN 1 of 2019(CAN 10608 of 2019)
(**Via video conference**)

Sushama Roy and others
Vs.
The State of West Bengal and others

Mr. Sanat Kumar Roy,
Mr. Baidurya Ghosal,
Mr. Abhishek Banerjee

... for the petitioners.

Re: **CAN 1 of 2019(CAN 10608 of 2019)**

This application for substitution of the heirs and legal representatives of the deceased petitioner no. 5 is in form and filed within time.

As such, CAN 1 of 2019(CAN 10608 of 2019) is allowed, thereby directing the heirs and legal representatives of the deceased petitioner no. 5, as named in paragraph no. 2 of this application, to be substituted in place and stead of the deceased petitioner no. 5.

Learned advocate appearing for the petitioners is granted liberty to carry out the necessary consequential amendments in the cause title of the revisional application.

There will be no order as to costs.

Re: **C. O. No. 3624 of 2015**

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

Despite service, none appears for the opposite parties.

The photocopy of the relevant judgment and decree, handed up in Court today, be kept on record.

Learned counsel for the petitioners argues that the executing court refused to exercise jurisdiction vested in it by law in dropping the execution case filed by the decree-holders/petitioners for implementing the judgment and decree dated November 30, 2006 passed in Title Suit No. 71 of 2001, erroneously on the premise that, on the face of the statute and from the BL & LRO report, the decree cannot be executed according to the provisions of the West Bengal Land Reforms Act, 1955.

Learned counsel submits that the said issue was already resolved finally against the judgment-debtors in the judgment itself and precludes the executing court from reconsidering such issue at the execution stage.

There is substance in the contention of learned counsel for the petitioners inasmuch as

the executing court committed a patent jurisdictional error in holding that the execution case was barred under the Act of 1955 or any other statute.

First, issue no. 3 in the suit itself was specifically on the question as to whether the suit itself was barred under Section 57B of the West Bengal Estates Acquisition Act, 1953, which was the relevant statute in context.

Such issue was decided in the negative, that is, in favour of the decree-holders/petitioners. That apart, even if any provision of the Act of 1955 came in the way of the plaintiffs getting reliefs in the suit (although the executing court is silent as to exactly how), such question cannot be reopened at the execution stage, either way, whether agitated in the suit or not.

It is well-settled that the executing court cannot go behind the decree and in view of the decree being specifically clear as regards the judgment-debtors/opposite parties being restrained from disturbing the peaceful possession of the revisionist petitioners except by due process of law, there arose no question of the executing court desisting from proceeding with the execution case.

Hence, the impugned order suffers from jurisdictional error, being patently perverse and *de hors* the law.

Accordingly, C. O. No. 3624 of 2015 is allowed, thereby setting aside Order No. 44 dated August 1, 2015 passed in Title Execution Case No. 6 of 2010 by the Civil Judge (Junior Division), Fourth Court at Burdwan. The executing court shall take up the execution proceeding from the stage where it was left at the time of the impugned order and shall dispose of the same as expeditiously as possible, positively within two months from the date of communication of this order to the said court.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)