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15.03.2021.
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**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction
(Appellate Side)**

CO 32 of 2021

**Sri Brij Mohan Roy
Vs.
Smt. Anima Barman and others**

Mr. Subhasish Misra

...for the petitioner

The petitioner is granted leave to file a properly stamped affidavit-of-service during the course of the day. It appears from the draft affidavit-of-service prepared by the petitioner and the documents annexed thereto, which is yet to be filed by the petitioner, that proper service has been effected in law on the opposite parties in view of the opposite parties having refused such service.

The grievance of the petitioner is that the petitioner was wrongfully evicted from his own plot, bearing no. 8138, in execution of a decree for eviction passed against a third party in respect of a different plot, bearing no. 8123. The petitioner, although not a party to the suit/decreed, upon being wrongfully evicted, took out an application in the connected execution case under Order XXVI Rule 9 of the Code of Civil Procedure for holding local investigation to ascertain whether the

petitioner's property, instead of the decretal property, was wrongfully delivered to the decree-holder.

By the impugned order, the Trial Judge rejected such application, primarily on the premise that a petition under the same provision of law, previously filed by the judgment debtor in respect of the same title execution case, had been allowed and the result thereof was still pending. Thus, the court found the petitioner's application redundant and rejected the same accordingly.

Although the ground furnished by the Trial Judge was justified, the impugned order rejecting the petitioner's application for local investigation was not passed on merits and, as such, does not prevent the present petitioner to approach the executing court, if necessary, under the appropriate provisions of law.

Accordingly, CO 32 of 2021 is disposed of by granting liberty to the present petitioner to file an appropriate proceeding under Order XXI Rules 97 to 101 of the Code of Civil Procedure, if the petitioner so deems fit, and also to file an application for local investigation afresh in connection with such proceeding, if need be. The executing court, while dealing with such applications, if filed, shall decide those independently on their own merits without being influenced by any of the observations made in the present impugned order dated March 3, 2020.

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.)