

20.04.2022  
(D/L-6-9)  
Ct.-18  
(Susanta)

C.O. 159 of 2021  
With  
I.A. No. CAN 1 of 2021 (Disposed of)  
And  
C.O. 160 of 2021  
With  
I.A. No. CAN 1 of 2021 (Disposed of)  
With  
C.O. 161 of 2021  
With  
I.A. No. CAN 1 of 2021 (Disposed of)  
With  
C.O. 162 of 2021  
With  
I.A. No. CAN 1 of 2021 (Disposed of)

Sri Santosh Chandra Das, since deceased,  
his substituted heirs and legal  
representatives Alo Rani Das & Ors.

-Vs-

Ashok Chatterjee

Mr. Sardar Amjad Ali,  
Mr. Probal Kumar Mjkherjee,  
Ms. Sucharita Ray,  
Ms. Jhuma Sen,  
Mr. Masroom Ali,

.... For the Petitioners.

Ms. Suchitra Saha,  
Mr. Niranjan Maity,  
Ms. Sharmila Basu,  
Ms. Priyanka Das,

.... For the Opposite Party.

The revisional applications are arising out of  
the self-same execution case, as such, they are  
taken up for analogous hearing and disposal.

**Re: C.O.159 of 2021 & C.O. 160 of 2021**

The predecessor-in-interest of the petitioners  
suffered an ex-parte decree for specific  
performance of an agreement for sale of the suit  
property in Title Suit No. 174 of 1994 passed by

the then 5<sup>th</sup> Assistant District Judge at Alipore District. 24 Parganas (Undivided) now designated as 5<sup>th</sup> learned Civil Judge (Senior Division) at Alipore, District. 24 Parganas (South).

The said decree was put into execution giving rise to connected Title Execution Case No. 06 of 1887.

In the said execution case, the petitioners filed two applications under Section 47 of the Code of Civil Procedure being Misc. Case no. 11 of 2008 and Misc. Case no. 35 of 2008.

In Misc. Case no. 11 of 2008, the judgment-debtor alleged that the decree under execution was obtained by practicing fraud as no agreement for sale was intended to be executed rather it was a loan transaction.

In Misc. Case No. 35 of 2008 the judgment-debtor alleged that the decretal property since has been vested with the State of West Bengal the decree cannot be executed.

The decree-holder by a common application prayed determination of the maintainability of the said two misc. cases.

The Executing Court by the order impugned in CO. 159 of 2021 and C.O. 160 of 2021 dated December 05 of 2020 has dismissed both the said misc. cases.

Investigation whether the said decree was obtained by practicing fraud upon the judgment-debtor or the agreement for sale whether was for the purpose of loan is beyond the scope of an application under Section 47 of the Code as such the Executing Court has rightly dismissed the said Misc. Case No. 11 of 2008.

However, the question raised in Misc. Case No. 35 of 2008 prima facie affects the execution discharge and satisfaction of the said decree as such needs to be answered, the order impugned does not reflect that such exercise was carried out by the Executing Court in dismissing the said misc. case.

Moreover, dismissal of the said misc. case as time barred requires a bit clarification which is lacking in the order impugned.

In consequence whereof the dismissal of Misc. Case No. 11 of 2008 is hereby affirmed but the dismissal of Misc. Case No. 35 of 2008 is hereby set aside.

The impugned order dated December 05, 2020 is modified to the extent indicated above.

The Executing Court is requested to dispose of the said Misc. Case No. 35 of 2008 as expeditiously as possible preferably within a period of three available effective working months of his Court from the date of communication of

this order and in doing so shall not entertain the prayer of the parties for any unnecessary adjournment.

Ms. Suchitra Saha, learned counsel for the decree-holder/opposite party submits that the Executing Court may be directed to consider the pending application for recalling of her client as witness as he wants to demonstrate that there is no such vesting of the suit property as alleged.

The decree-holder is entitled to such an opportunity therefore, if such an application is pending the Executing Court while deciding the said Misc. Case No. 35 of 2008 shall consider the same in accordance with law.

C.O. 159 of 2021 and C.O. 160 of 2021 are disposed of with the above terms, without any order as to costs.

**Re: C.O. 161 of 2021**

The orders dated December 14 of 2020, December 22 of 2020 and December 24 of 2020 passed in the said Title Execution Case No. 06 of 1997 are under challenge in the present revisional application.

The order dated December 14 of 2020 and December 24 of 2020 are mere procedural orders passed in the said execution case as such not open to challenge in an application under Article 227 of the Constitution of India.

The Executing Court by the order dated December 22, 2020, inter alia, has directed the bailiff to deliver the peaceful possession of the suit property to the decree-holder.

The Executing Court has acted with material irregularity in directing so, inasmuch as the said direction appears to have been passed on the oral prayer of the learned advocate for the decree-holder.

Ms. Suchitra Saha, learned counsel for the decree-holder although submits that pursuant to the execution of the deed of conveyance by the Executing Court an application for possession possibly is on record but the order impugned does not reflect that the said direction for possession was passed on the basis of any application or after affording opportunity to the judgment-debtor to contest the said prayer of the decree-holder.

The order impugned dated December 22, 2020 therefore suffers from material irregularity as such is not sustainable and is accordingly set aside.

However, liberty is granted to the decree-holder to pray for the same relief on the application if already on record and if no such application is on record, the decree-holder is at liberty to file an application for similar relief. The

Executing Court is requested to dispose of the said application immediately after the disposal of the Misc. Case No. 35 of 2008.

C.O. 161 of 2021 is thus disposed of, without any order as to costs.

**Re: C.O. 162 of 2021**

In the instant revisional application under Article 227 of the Constitution of India the orders dated January 04, 2021 and January 05, 2021 passed in the said execution case are under challenge.

The order dated January 04, 2021 is an order recording filing of an application under Section 151 of the Code of Civil Procedure by the judgment-debtor, challenge to such an order is misconceived.

The judgment-debtor by the said application prayed for recalling of the order dated December 05, 2020 whereby the Executing Court dismissed the Misc. Case No. 11 of 2008 and Misc. Case No. 35 of 2008.

The Executing Court by the impugned order dated January 05, 2021 has dismissed the said application.

In view of the order passed in C.O. 159 of 2021 and C.O 160 of 2021 challenge to the order dated January 05, 2021 has become infructuous.

However, Sardar Amjad Ali, learned senior advocate for the petitioners submits that executing court by the latter part of the order dated January 05, 2021 has transgressed the jurisdiction of an executing Court by directing demolition of the alleged illegal construction over the suit property.

Record discloses that the Executing Court by the said order dated January 04, 2021 had fixed January 05, 2021 as the date for hearing of the application filed by the judgment-debtor under Section 151 of the Code only, therefore, on the said date such a direction ought not to have been passed by the Executing Court that too without giving any opportunity to the judgment-debtor to contest the said prayer of the decree-holder.

In view of such position of the record, the aforesaid submission of Mr. Ali, although deserves consideration, need not be gone into at this stage.

The latter part of the order dated January 05, 2021 therefore is set aside.

Ms. Saha, submits that the decree-holder has filed an application for demolition of the illegal construction over the suit property, she prays the said application may also be disposed of expeditiously.

If such an application is pending, this order shall not stand in the way of its disposal in accordance with law but the maintainability of such an application is kept open.

C.O. 162 of 2021 is disposed of with the above terms without any order as to costs.

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

(Biswajit Basu, J.)