

09.06.2022
(D/L-11)
Ct.-18
(Susanta)

C.O. 1087 of 2018

Rani Maity
-Vs-
State, represented by the Collector, Purba Medinipur
Mr. Gopal Chandra Ghosh,
.... For the Petitioner.

None appears on behalf of the opposite party
in spite of service.

Petitioner is the decree-holder of the decree
of permanent of injunction passed in Title Suit
No. 159 of 1963 affirmed in Title Appeal No. 413
of 1964.

The petitioner put the said decree of
permanent injunction into execution under Order
XXI Rule 32 of the Code of Civil Procedure giving
rise to connected Title Execution Case No. 1 of
2016 before the 1st Court of learned Civil Judge
(Junior Division), Contai, District Purba
Medinipur.

The Executing Court by the order impugned
being Order no. 13 dated March 27, 2018 has
dismissed the execution case holding that since
it has been filed beyond the period of 12 years
from the date of appellate decree it is barred by
limitation.

The limitation for putting a decree of
permanent injunction into execution is governed

by Article 136 of the schedule of the Limitation Act, 1963 which reads as follows:-

Description of suit	Period of limitation	Time from which period begins to run
136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	twelve years	10[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place: <u>provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.</u>

In view of the proviso to the third column of the said Article quoted above, the Executing Court has clearly fell in error in holding that the said execution case is barred by limitation.

The order impugned is, therefore, set aside.

The Title Execution Case no. 1 of 2016 is restored to its original file and number.

The Executing Court is directed to expedite the disposal of it.

C.O. 1087 of 2018 is thus allowed 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 subject to compliance with all requisite formalities.

(Biswajit Basu, J.)