

17.07.2023.
Supple Item No. 1.
Court No. 13
ap

**S.M.A.T. No. 7 of 2022
With
I.A. No. CAN 1 of 2022**

**Sri Tapan Das & Ors.
Versus
Malay Das & Ors.**

Mr. Rajdeep Bhattacharya.
...For the Appellants.

Mr. Sudip Das.
...For the Respondents.

1. The intra court appeal is directed against a judgment and order dated 24th August, 2022 passed in Title Appeal No. 10 of 2020 by the learned Civil Judge (Senior Division) Chandernagore, Hooghly.

2. The brief facts relevant to the case are that Title Suit No. 145 of 1984 was decreed by the learned Civil Judge (Junior Division) 1st Court at Chandernagore, Hooghly, against which Title Appeal No. 338 of 1987 was carried and dismissed.

3. Thereafter the applicant's application under Section 47 of the Code of Civil Procedure being Misc. Case No. 5 of 1993 was also dismissed. The order of dismissal of the application under Section 47 of the Code of Civil Procedure, 1908 was confirmed in a revisional application being C.O. No. 708 of 2004 by this Court. The right, title and interest of the respondents in respect of plot no.457 was confirmed.

4. The predecessor-in-interest of the appellants, their father was a party to the Title Suit and died during its pendency. The Title Appeal was carried allegedly in the name of the deceased father and other persons in which failed.

5. When the decree was put into execution by the respondents/opposite parties in Title Execution Case No. 336 of 2014, the appellant herein filed Misc. Judicial Case No. 21 of 2017 under Order XXI, Rules 99-100 of the Code of Civil Procedure, 1908, inter alia, contending that the decree is not executable against him. The Court below has dismissed the appellant's application by the impugned order dated 22nd August 2022, and the execution has been proceeded with.

6. Mr. Rajdeep Bhattacharyya, Learned Counsel appearing for the appellants would argue before this Court that the decree passed by the First Court and dismissal thereof by the Lower Appellate Court in Title Appeal are erroneous since the appellants' father died during the pendency of the suit and there was no substitution. Consequently, the appeal was decided against the petitioners' father, who was a dead person. Such decree is therefore not binding or enforceable or executable against him.

7. As already indicated hereinabove, the decree and the judgment in Title Appeal have been confirmed by this Court in its revisional jurisdiction in C.O. No. 708

of 2004 already referred to hereinabove. The decree is against the whole property, being plot no. 457. The other occupants, relatives and associates of the appellants contested the said proceedings all the way to this Court.

8. The appellants and/or their predecessor being a party to the suit and the appeal, cannot by any stretch of imagination invoke the provisions of Order XXI, Rules 99-100 of the Code of Civil Procedure, 1908 and indirectly and surreptitiously seek a de novo trial and/or reopening of the decree of the First Court as already confirmed by the Lower Appellate Court and this Court in its revisional jurisdiction. The application filed by the appellants under Order XXI, Rules 99-100 of the Code of Civil Procedure, 1908 was therefore not maintainable.

9. This Court is in concurrence with the impugned judgment, that the petitioners, under the garb of being alleged third party on whom the decree may not be binding, were in fact seeking a de novo trial of matters that have been decided and confirmed all the way before this Court.

10. For the reasons discussed hereinabove, the impugned judgment and order dated 24th August, 2022 passed by the learned Civil Judge (Senior Division) Chandernagore, Hooghly does not call for

any interference by this Court. Accordingly, S.M.A.T. No. 7 of 2022 shall stand dismissed.

11. Interim order, if any, shall stand vacated.

12. However, in the facts and circumstances of the case, there will be no order as to costs.

13. In view of dismissal of the appeal itself, the connected applications being CAN 1 of 2022 shall stand dismissed.

14. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)