

S/L 19
25.6.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2204 of 2024

Sri Nimai Mudi

Vs.

Sri Anadi Baran Layek & Ors.

Mr. Chittapriya Ghosh

Mr. Samir Kumar Adhikari

...for the Petitioner.

The petitioner has suffered a decree of declaration and injunction in Title Suit No.210 of 2013 passed by the 1st Court of learned Civil Judge (Junior Division), Khatra, Bankura.

The decree-holders/opposite parties have put the said decree into execution for restoration of their possession over the suit property alleging post-decree dispossession.

In the said execution case being Title Execution Case No.6 of 2023, the petitioner has filed an application under Section 47 of the Code of Civil Procedure raising objection regarding execution, discharge and satisfaction of the said decree.

The executing Court by the order impugned being Order No.7 dated May 20, 2022 (sic 2024) has overruled the said objection and has directed the decree-holders to put in requisites for issuance of writ of possession.

Mr. Chittapriya Ghosh, learned advocate for the petitioner, in his usual fairness submits that in view of the amended provision of Order XXI Rule 32(5) of the Code, particularly the explanation appended thereto, the decree

under execution though is a decree of prohibitory injunction, such decree covers mandatory injunction.

He however submits that the said decree is not executable till the disposal of the second appeal arising out of a suit for partition between the parties over the selfsame property, particularly when there is a subsisting order of injunction passed in the said appeal.

Having heard Mr. Ghosh, and on perusal of the materials on record, it appears that the Hon'ble Division Bench of this Court while admitting the said second appeal, has stayed the operation of the preliminary decree of partition under challenge in the said appeal; such order of stay cannot affect the executability of the said decree under execution, therefore the executing Court has rightly overruled the objection of the petitioner.

The order impugned for the aforesaid reasons does not call for any interference.

CO 2204 of 2024 is disposed of without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Biswajit Basu, J.)