

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 253 of 2025
Partha Sarathi Ganguly
Vs.**

M/s. Suburban Land & Building Society Pvt. Ltd.

For the Petitioner	: Mr. Probal Mukherjee, Sr. Advocate Mr. Sayani Roy Chowdhury Ms. Debjani Ghosal Ms. B. Mondal advocates
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For the Opposite Party	: Dr. Chaples Bandyopadhyay Ms. Gargy Basu Ms. Anandamayee Dutta ...advocates
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Reserved on	: 20.03.2025
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Judgment on	: 06.05.2025
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Hiranmay Bhattacharyya, J.:-

1. This application under 227 of the Constitution of India is at the instance of the judgement debtor and is directed against an order dated December 18, 2024 passed by the learned Civil Judge, Junior Division, 1st Court at Alipore, District 24 Parganas (South) in Title Execution Case no. 27 of 2024.
2. The Opposite Party herein filed a suit for declaration of title and that the opposite party has right to construct the boundary wall on the suit land and for permanent injunction restraining the petitioners from offering any resistance to the opposite party in the matter of raising boundary wall in the

suit property and/or from disturbing the peaceful possession of the opposite party on the suit property and for a decree of mandatory injunction directing the petitioner to remove the bamboo poles lying in the suit property.

3. The said suit was decreed by a judgment and decree dated January 4, 2024. The said decree was put into execution giving rise to Title Execution Case no. 27 of 2024.
4. The Opposite Party herein filed an application under Rule 208 of Civil Rules and Orders praying for police help. The petitioner herein filed a petition raising an objection as to the maintainability of the Title Execution case.
5. The learned Executing Court, by an order dated December 18, 2024 after deciding the issue of maintainability in favour of the opposite parties herein allowed the petition for police help.
6. Being aggrieved, by such order, the judgment debtor has approached this Court.
7. Mr. Mukherjee learned Senior Advocate appearing in support of the Civil Revision Application contended that the opposite parties are trying to recover possession of an immovable property by executing a decree of mandatory injunction. He submitted that the opposite party herein did not pray for a decree for recovery of possession. By drawing the attention of the Court to the Tabular Statement/ the application for execution of decree Mr. Mukherjee contended that the opposite party herein is trying to recover possession of the suit property. He submitted that the execution application is not maintainable as the opposite party herein has sought for a direction upon the bailiff to deliver the vacant Khas possession of the decretal property in favour of the opposite parity. In support of such contention Mr. Mukherjee placed reliance upon a decision of a co-ordinate bench in the case of **Gita Devi Marulia vs. Asansol Medical Centre** reported at **(2016) 1 CHN 469**.

8. Per contra the learned advocate for the opposite party contended that the opposite party prayed for execution of the decree for mandatory injunction. He contended that the petitioner was directed to remove the bamboo poles from the suit property which implies after removal of the bamboo poles the possession is to be handed over to the opposite parties. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Sant Lal Jain vs. Avtar Singh** reported at **(1985) 2 SCC 332**; **Joseph Severance and Ors vs. Benny Mathew** reported at **AIR Online 2005 SC 1079** and **Arulmigu Chokkanatha Swamy Koil Trust v. Chandran**, reported at **(2017) 3 SCC 702**.
9. Heard the learned advocates for the parties and perused the materials placed.
10. The learned Civil Judge, Junior Division, First Court at Alipore, by a judgment and decree dated January 4, 2024, decreed the Title Suit no. 360 of 2012 thereby declaring the right, title, interest and possession of the opposite party in respect of the suit property and the petitioner was directed to remove his belongings i.e., bamboo poles from the scheduled suit property within 60 days from the passing of the order and judgment failing which the opposite party would be at liberty to apply for its execution. The petitioner was permanently restrained from distributing the peaceful possession of the plaintiff in the suit property.
11. The said decree was put into execution giving rise to Title Execution Case no. 27 of 2024. In column 10 of the tabular statement under the heading "Relief Prayed", it was stated that the judgment debtor be directed to remove their belongings i.e., bamboo poles from the suit property. However, as against column no. 11 under the heading "Mode in which the assistance of the Court is required" it was stated that the bailiff shall go to the suit property and remove of articles and belongings i.e., bamboo poles of the judgment debtors from the suit property and shall deliver vacant Khas possession of it to the decree holder, if required with police help.

12. The objection raised by the petitioner as to the maintainability of the execution case is that the decree does not provide for delivery of vacant Khas possession of the property in favour of the decree holder.
13. As observed hereinbefore, the learned Trial Judge passed a decree for permanent injunction and directed the petitioners to remove the belongings i.e., bamboo poles from the suit property. The said decree only provides for removal of bamboo poles from the suit property.
14. There is no quarrel to the proposition of law laid down in **Gita Devi (supra)** that if a party was never in possession, a decree for recovery of Khas possession has to be prayed for in the said suit. There is also no quarrel to the proposition of law laid down in **Sant Lal (supra)** that merely because the plaint has been couched in the form of mandatory injunction, the Court even at the appellate stage can pass a decree for recovery of possession. The said decision cannot come to the aid of the opposite party as the issue herein is not as to what type of decree to be passed but how the decree passed is to be executed. In **Joseph (supra)** the Hon'ble Supreme Court reiterated the proposition of law laid down in **Santlal Jain (supra)**. For the reasons as stated hereinbefore the aforesaid decisions cannot come to the aid of the opposite party in the case on hand.
15. In **Chandran (supra)** the plaintiff therein was out of possession and for such reason it was held that a suit claiming only declaratory relief along with mandatory injunction without claiming the relief of recovery of possession was clearly not maintainable. Such decision is not applicable to the case on hand as the opposite parties herein prayed for declaratory relief along with the relief for permanent and mandatory injunction and the learned Trial Judge passed a decree for permanent and mandatory injunction in favour of the opposite parties.
16. It is well settled that the executing Court cannot go behind the decree. In the tabular statement under "column 10" it has been specifically stated that the decree holders have prayed for a relief against the judgment debtors for

removal of their belongings i.e., bamboo poles from the suit property. The mode in which assistance of the Court is required is for execution of the decree through the bailiff and if necessary with police help.

17. Since the opposite parties herein have prayed for relief against the judgment debtor petitioner for removal of their belongings i.e., bamboo poles, this Court holds that the assistance of the bailiff and the police in the matter of execution of the decree should be only for the purpose of removal of the bamboo poles from the decretal property. The order impugned stands modified only to the extent as indicated hereinbefore.
18. CO No. 253 of 2025 stands disposed of with the above observations.
19. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)