

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Uday Kumar**

**FMAT No. 216 of 2025
With
CAN 2 of 2025**

**Smt. Ganga Bohra
Vs.
Sri Sourav Roy**

For the appellant : Mr. Abhrajit Mitra, Sr. Adv.,
Mr. Anirban Das,
Mr. Satadeep Bhattacharyya

For the respondent : Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das

Heard and reserved on : 25.09.2025

Judgment on : 27.10.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the judgment resistor in Title Execution Case No. 12 of 2023 against an order whereby her application under Order XXI Rules 97 to 101 of the Code of Civil Procedure (CPC) was dismissed as not maintainable.
2. The brief facts of the case are as follows:
3. A property situated in Salt Lake (Bidhannagar), in the proximate suburbs of the city of Kolkata, is the subject-matter of the present *lis*. A registered deed of lease was executed in respect of the suit property by the State of West Bengal in favour of one Sunil Kumar Roy (since

deceased) on September 26, 1972. The said Sunil Kumar Roy entered into a tenancy agreement with two companies, namely M/s Triveni Holding Pvt. Ltd. and M/s Argan Traders Pvt. Ltd.

4. Subsequently, one Smt. Mira Roy, the widow of Late Sunil Kumar Roy, instituted a suit bearing Title Suit No. 74 of 2011 before the learned Civil Judge (Senior Division), Second Court at Barasat, District-North 24 Parganas, *inter alia* for declaration that the transaction between the Late Sunil Kumar Roy and the aforesaid two Companies (arrayed in the suit as defendant nos. 1 and 2) was a loan in substance, a decree for delivery of possession of the suit property in favour of the plaintiff Smt. Mira Roy and for permanent injunction and other consequential reliefs. In the said suit, the present respondent Sri. Sourav Roy, the son of Late Sunil Kumar Roy and Smt. Mira Roy, was impleaded as proforma defendant no.3. Subsequently, the said suit was dismissed on June 15, 2016. An appeal was preferred by the plaintiff Smt. Mira Roy against the said dismissal, giving rise to FA No. 212 of 2016, which was allowed on contest by a judgment and decree dated February 16, 2023, thereby setting aside the judgment and decree of the trial court and decreeing the suit. A Special Leave Petition, bearing SLP (Civil) No. 27260 of 2023, filed against the same, was rejected at the admission stage.
5. The decree holder levied execution of the decree, giving rise to Title Execution Case No. 12 of 2023. In the meantime, the original decree holder Mira Roy having died, the present respondent stepped into her shoes and was substituted as the decree holder.

6. The present appellant Smt. Ganga Bohra filed an application under Section 47 of the Code of Civil Procedure, bearing Miscellaneous Case No.140 of 2024, which was dismissed on February 28, 2025. A revisional application bearing CO No. 1401 of 2025 was preferred against the same.
7. Prior thereto, the appellant had also taken out an application under Order XXI Rules 97 to 101 of the CPC, giving rise to Miscellaneous Case No. 30 of 2024. In the said application, the appellant claimed right, title and interest in the property on the strength of a Will purportedly executed by Late Sunil Kumar Roy in favour of the appellant, naming her as the Executor as well, on March 15 of 1994. It was pleaded that Miscellaneous Case No. 283 of 2014 had been filed by the appellant for grant of probate of the said Will, on the demise of the testator Late Sunil Kumar Roy, which subsequently turned contentious on the respondent and the decree holder filing objection thereto, and was registered as OS No. 7 of 2016. The said probate suit is still pending.
8. By the impugned judgment, the said application, bearing Miscellaneous Case No. 30 of 2024, was dismissed as not maintainable, primarily on three grounds.
9. First, the executing court held that the objection by a third party in anticipation of dispossession is not permissible under Order XXI Rule 99, CPC. Secondly, since the Will of Late Sunil Kumar Roy had not yet been probated, the appellant does not have locus standi to represent the state of the deceased testator. Thirdly, it was held that since an

undertaking was given by the judgment debtor-companies before the Hon'ble Supreme Court in a Special Leave Petition filed by the judgment debtors, bearing SLP No. 26647 of 2023, on the basis of which the petitioners therein were granted six months' time to vacate the suit premises and due to violation of such undertaking the SLP was dismissed, the present execution proceedings are distinct from other execution proceedings. The third ground was based on the arguments of the respondent that since the defendant-Companies had suffered the decree of eviction and the present appellant was a Director of one of the said Companies, she was bound by the said decree.

- 10.** Learned senior counsel appearing for the appellant argues that the objections taken under Order XXI Rule 99 of the CPC ought not to have been disposed of straightaway at the threshold, on the ground of maintainability/locus standi. Proper issues ought to have been framed relating to the objections and proper opportunity of hearing was to be given, upon which there has to be an adjudication on merits by the Executing court. In support of the said contention, learned senior counsel cites a judgment of a learned Single Judge of the Punjab and Haryana High Court in the matter of *Baljit Singh vs. Balkar Singh*, reported at 2000 SCC OnLine P & H 739.
- 11.** Learned senior counsel next argues that the judgment resistor need not wait for dispossession to maintain an application under Order XXI Rule 99 of the Code of Civil Procedure. In support of such proposition, learned counsel cites *Babulal v. Raj Kumar*, reported at (1996) 3 SCC

154 and *Commissioner Jalandhar Division and Ors. vs. Mohan Krishan Abrol and Anr.*, reported at (2004) 7 SCC 505.

12. It is next contended that since the probate suit was already pending at the relevant juncture, the Executing court ought to have clubbed the said proceeding along with the application under Order XXI Rules 97 to 101, the latter being in the nature of a suit, instead of dismissing the application right away. To support such contention, learned senior counsel cites *Commissioner, Jalandhar Division and Others v. Mohan Krishan Abrol and another*, reported at (2004) 7 SCC 505.
13. Learned senior counsel appearing for the appellant next argues that the appellant objected to the execution case within the contemplation of Order XXI Rules 97 to 101, CPC on the strength of her title in individual capacity by dint of the Will of Late Sunil Kumar Roy. The appellant, being the executor and the legatee under the said Will, claimed title independently of the rights of the judgment debtor companies. The appellant, in the said proceeding, did not assert title through or under the judgment debtor-companies or as the Director of any of them.
14. It is next contended by the appellant that even if no probate has yet been granted, a composite reading of Sections 211 and 213 of the Indian Succession Act, 1925 (hereinafter referred to as the "Succession Act") clearly shows that for all purposes, the executor of a Will is a legal representative of the testator and the estate of the testator vests in the executor on the demise of the testator, irrespective of grant of probate. Thus, the application under Order

XXI Rules 97 to 101 was very much maintainable at the instance of the appellant.

- 15.** Learned counsel for the respondent controverts the submissions of the appellant and argues that Section 213 of the Succession Act categorically provides that no right as executor or legatee can be established in any court unless a competent court has granted probate of the Will under which the right is claimed. It is argued that Section 211 only comes into effect upon grant of probate.
- 16.** Learned counsel for the respondent next argues that sub-section (2) of Section 211 provides that when the deceased is a Hindu, which the testator was, the provisions of Section 211(1) shall not vest in the executor any property of the deceased person which would otherwise have passed by survivorship to some other person. In the present case, it is Smt. Mira Roy and the present respondent, being the widow and the son of the testator respectively, on whom the property devolved by survivorship and, as such, the property did not vest in the executor.
- 17.** Lastly, it is contended that the purported Will is a product of forgery, as pleaded in the plaint of Title Suit No. 74 of 2011, which was ultimately decreed by the First Appellate Court, thereby accepting such contention. Hence, the Executing court was justified in dismissing Miscellaneous Case No. 30 of 2024.
- 18.** Upon hearing learned counsel for the parties, it transpires that the following questions fall for consideration in the present appeal:

- (i) *Whether the application filed by the judgment resistor/appellant under Order XXI Rules 97 to 101, CPC prior to her dispossession is maintainable in law;*
- (ii) *Whether the appellant has locus standi to object to the execution of the decree on the strength of an unprobated Will;*
- (iii) *Whether the judgment resistor/appellant is bound by the decree passed against the judgment debtor-companies and the undertaking given by the said judgment debtors to vacate the property, since the judgment resistor was a Director of one of the judgment debtor-companies.*

19. The above issues are answered as follows:

- (i) **Whether the application filed by the judgment resistor/appellant under Order XXI Rules 97 to 101, CPC prior to her dispossession is maintainable in law**

20. The chronology of the following events is of importance in the context:

<u>Dates</u>	<u>Events</u>
March 15, 1994	Purported Will executed by late Sunil Kumar Roy in favour of the appellant-Smt. Ganga Bohra.
September 22, 2014	Miscellaneous Case No. 283 of 2014 (P) filed by the appellant for grant of probate in respect of the said Will after the demise of the testator; on turning contentious,

	the probate application was renumbered as OS No. 2 of 2016.
June 15, 2016	Title Suit No. 74 of 2011, filed by the widow of the deceased testator, is dismissed on contest.
February 16, 2023	FA No. 212 of 2016 is allowed on contest, thereby setting aside the decree of dismissal and decreeing Title Suit No. 74 of 2011.
March/ April, 2023	Title Execution Case No. 12 of 2023 filed for execution of the Appellate Court's decree.
June 19, 2023	Writ of possession issued in connection with the execution case.
February, 2024	Decree holder/respondent filed an application under Rule 208 of the Civil Rules and Orders framed by the Calcutta High Court for obtaining possession.
March 15, 2024	Miscellaneous Case No. 30 of 2024 filed by the judgment resistor/appellant under Order XXI Rules 97 to 101, CPC.

- 21.** Thus, as on the date of filing of Miscellaneous Case No. 30 of 2024, captioned under Order XXI Rules 97 to 101, CPC, execution in respect of the decree, *inter alia* for eviction, had already been levied, upon which writ of execution was issued and having been returned by the court bailiff unsuccessfully, an application under Rule 208 of the Civil Rules and Orders for obtaining possession, on the ground of the decree being obstructed, was filed.
- 22.** It has to be kept in mind that Rules 97 to 103 of Order XXI of the Code of Civil Procedure provide a complete, self-sufficient ecosystem of their own, acquiring the character of a mini Code. The scheme of the said provisions is for the executing court to conclusively decide all

issues arising between third party objectors to the decree and the decree holder, instead of relegating the parties to a further suit. Such an adjudication, although summary in nature, has all the trappings of a civil suit, culminating in an order which has the force and incidents of a regular decree.

- 23.** Rule 97 of Order XXI contemplates an application by the decree holder, when resisted or obstructed by any third party apart from the judgment debtor, whereas Rule 99 envisages an application for restoration of possession by a third party objector who has been dispossessed pursuant to the decree.
- 24.** Rules 98 and 100 respectively contemplate orders to be passed on applications under Rules 97 and 99. The common factor in both Rules 98 and 100 is that if an objection is raised to a decree by a third party other than the judgment debtor, all questions so arising, including questions relating to right, title or interest in the property, have to be determined by the executing court first under Rule 101 of Order XXI prior to orders under Rules 98 and/or 100 being passed. Thus, it is mandatory for the executing court to decide all disputes and questions of right, title and interest in the property raised by third party objectors prior to disposing of applications under Rules 97 and 99, by passing orders under Rules 98 and 100 respectively.
- 25.** Thus, the entire gamut of situations, ranging between a decree holder applying for getting possession by overcoming the resistance of a third party and restoration of possession to a third party having title to the

property who has been dispossessed in terms of the decree, are covered between the said provisions.

- 26.** The question which arises is whether a third party objector can validly raise an objection to dispossession before being actually dispossessed. The answer to the question lies in the question itself, since a third party claiming independent title ought not to be dispossessed with the blessings of law, despite having raised a valid question of title to the property, by waiting for such third party to be dispossessed first, which would be akin to waiting for a patient to be dead to hold an autopsy instead of a biopsy to cure him during his lifetime. Such an interpretation of Rules 97 to 101 of Order XXI would bring about a travesty of justice instead of furthering its cause.
- 27.** Even otherwise, the moment an objection is raised to the execution of a decree by a third party, a situation contemplated under Rule 97 of the Code of Civil Procedure arises as soon as the decree holder applies to get possession by overcoming such obstruction.
- 28.** Rule 208 of the Civil Rules and Order framed by this Court provides the modalities of a decree holder praying for police help in execution of a decree. Such provision, thus, presupposes that a serious obstruction to execution of the decree has been raised, so much so as to create an apprehension that execution will not be effected without serious danger to the public peace, requiring police assistance in implementation of the decree.
- 29.** Thus, the decree holder/respondent in the present case, by filing an application under Rule 208 of the Civil Rules and Orders on February

3, 2024, implicitly, if not expressly, admitted that there was obstruction to the implementation of the decree. Coupled with this, the objection raised by the judgment resistor/appellant by filing the application under Order XXI Rules 97 to 101 (Miscellaneous Case No. 30 of 2024) clearly brought the circumstances of the case within the contemplation of Rules 97 and 98 of Order XXI, since the holder of the decree had applied for possession of the decretal property complaining of resistance or obstruction, upon which objections based on questions of independent right, title and interest of the judgment resistor had been raised within the contemplation of Rule 101. Thus, the statute mandated the executing court to pass an order on the application for possession filed by the decree holder, within the contemplation of Rule 97, which order would come under the ambit of Rule 98 and could be passed only upon conclusive adjudication on the questions raised by the judgment resistor under Rules 101 or Order XXI, including questions as to right, title and interest in the decretal property.

- 30.** Hence, the executing court erred in law in concluding that the application of the appellant was not maintainable in anticipation of dispossession, as dispossession is not the sole criterion or even a pre-requisite of an adjudication under Rule 101 of Order XXI.
- 31.** In such view of the matter, this issue is decided in favour of the appellant inasmuch as the learned executing court erred in law in holding Miscellaneous Case No. 30 of 2024 to be not maintainable on

the ground that it was only in anticipation of dispossession, without any real dispossession having taken place.

(ii) **Whether the appellant has locus standi to object to the execution of the decree on the strength of an unprobated Will**

32. Certain provisions of the Succession Act are required to be looked into for comprehensively deciding this issue, which are set forth below:

“211. Character and property of executor or administrator as such.— (1) *The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in- him as such.*

(2) *When the deceased was a Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.*

...

213. Right as executor or legatee when established.— (1) *No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 3 [India] has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.*

(2) *This section shall not apply in the case of wills made by Muhammadans or Indian Christians, and shall only apply—*

(i) *in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and*

(ii) *in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such wills are made within the local limits of the*

ordinary-original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.

...

227. Effect of probate.— *Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.*”

33. The interplay between Sections 211 and 213 is of utmost importance in the context.
34. Section 213(1) stipulates that no right “as executor or legatee” can be established in a court of law on the strength of a Will unless probate has been granted in respect thereof. The key expression in the said sub-section is “as executor or legatee”.
35. Against such backdrop, sub-section (1) of Section 211 provides that the executor of a testator is his legal representative “for all purposes” and all the property of the deceased person “vests in him as such”. It is to be noted that the conferment of powers as the legal representative of the estate of the deceased testator on the executor is “for all purposes”. Moreover, the expression “as such” suffixing the phrase “vests in him” makes it abundantly clear that the investiture of the estate of the deceased testator on the executor is in the capacity of the legal representative of the deceased.
36. A conjoint reading of Sections 213 and 211 makes it abundantly clear that the bar on acting as an executor under Section 213 is restricted to the capacity of executor alone, and does not extend to the role of a

legal representative of the deceased testator. For example, there cannot be any distribution of assets by the executor (acting as executor) in favour of the legatees in terms of the Will without a probate being granted first. Such fetter is only from acting as an executor and not otherwise.

- 37.** On the other hand, under sub-section (1) of Section 211, the bar on the executor acting as an 'executor' does not denude the executor of his power, acting as the 'legal representative' of the testator (on whom the property of the deceased vests on his demise), to protect the property and to participate in any legal proceeding for such purpose in respect of the property of the deceased.
- 38.** Thus, the executor can act as the legal representative of the testator before any judicial forum or otherwise, stopping short of distributing the property as executor in terms of the Will, even before getting a probate. Nothing in Section 211 of the Succession Act makes such investiture of the testator's property and the locus to act as legal representative of the testator for all purposes on his executor subject to a prior grant of probate. Thus, such investiture of property and character as legal representative is triggered by the demise of the testator itself (of course, only if a Will has been executed by the testator), irrespective of probate being granted.
- 39.** This proposition further gains currency in the light of *Mohan Krishan Abrol (supra)*¹, where the Hon'ble Supreme Court held that a bare

1. Commissioner, Jalandhar Division and Others v. Mohan Krishan Abrol and Another, reported at (2004) 7 SCC 505

reading of Section 211 shows that the property vests in the executor by virtue of the Will and not by virtue of the probate. The Will gives property to the executor; the grant of probate is only a method which the law provides for establishing the Will. The bar under Section 213, it was held in the said report, comes into play only when a right as an executor or a legatee is sought to be established; however, an unprobated Will can be admitted in evidence for collateral purposes in any other proceeding apart from probate proceedings.

- 40.** It is noteworthy that the investiture of the property of the testator in the executor as legal representative under Section 211(1) is not circumscribed by prior grant of probate, as opposed to the actions of an executor in such capacity under Section 213.
- 41.** Another important Section which is required to be looked into, for a complete understanding of the inter-relation between Sections 211 and 213, is Section 227 of the Succession Act. The said provision stipulates that the probate of a Will, when granted, establishes the Will “from the death of the testator, and renders valid all intermediate acts of the executor as such”.
- 42.** It is a well-settled proposition of law that property cannot exist in a vacuum and must vest in some entity. Thus, it would be an absurd proposition to suggest that till probate is granted, the estate of the deceased testator remains in no-man’s land, uncared for and unprotected, and only upon probate being granted does the executor gain the right to protect the same in order to give effect to and honour the intention of the deceased testator in his last Will and testament.

43. Thus, on a composite analysis of Sections 211, 213 and 227 of the Succession Act, the following principles emerge:

- If there is a Will, immediately upon the demise of the testator, his estate vests in the executor in the capacity of legal representative of the testator for all purposes.
- From the death of the testator till grant of probate, the executor, in the capacity of legal representative of the testator, is the ostensible owner of the property, which vests in him as legal representative, for the limited purpose of protecting the said property till the same is distributed in accordance with the Will.
- However, till probate is granted, the executor or legatee cannot act in such capacities respectively. Only upon probate being granted, the grantee of the probate (executor) can exclusively act as the representative of the deceased and proceed to administer the subject-property of the Will in the manner as provided therein.
- On the grant of probate, the Will is established from the death of the testator all intermediate acts by the executor in the capacity of the legal representative of the deceased testator are rendered valid retrospectively from the death of the testator.

44. In the light of the above principles, the appellant in the present case, in her capacity as executor and legal representative of the deceased testator, is fully entitled, from the date of demise of the testator late Sunil Kumar Roy, to resist dispossession from the property, since the

ultimate beneficiary/legatee of the Will is also the executor/appellant and such participation of the executor in the execution case is for the purpose of protecting the estate of the deceased testator till it is distributed in terms of the legacy as intended by the testator in his Will.

45. A more basic objection has, however, been raised by the respondent, to the effect that the investiture of property and legal representation on the executor under sub-Section (1) of Section 211 of the Succession Act is excluded and debarred by operation of sub-Section (2) of the said provision. If upheld, the above objection would hit at the very legitimacy of the above discussion on the locus standi of the appellant, in her capacity as executor of the Will of late Sunil Kumar Roy, to maintain the application under Order XXI Rules 97-101, CPC.
46. To answer this question, the term “survivorship” is to be examined in proper perspective. In law, particularly in the context of Hindu law, by the *Dayabhaga* School of which the testator was undisputedly governed, the expression “survivorship” is different from “succession”.
47. Hindu law of succession is divided primarily into two schools – *Mitakshara* and *Dayabhaga*. The two schools originate from different texts and lineages. The latter school is mostly prevalent in the Eastern and North-Eastern states of India, while the former governs vast portions of the rest of India, in particular the Northern and Western regions of the country.
48. As per the *Mitakshara* School, title to ancestral coparcenary property devolves upon a coparcener upon his birth into the joint family, even

during the lifetime of his father. The exception to this is self-acquired property of a coparcener, which devolves on his heir by succession on his demise.

49. On the other hand, in the *Dayabhaga* School of Hindu law, property devolves on the heirs of a person universally by succession on the demise of such person, and not from the birth of a family member, even if the family is joint. Under the *Dayabhaga* School, the property of a person (comprised both of his share in ancestral property and his self-acquired property) devolves by succession on his heirs only upon his demise.
50. The above distinction is extremely significant to interpret sub-Section (2) of Section 211 of the Succession Act. It is well-settled that redundancy cannot be attributed to Legislative intent. Every word and punctuation mark used in a statute is, by default, to be deemed to have some meaning and significance. Seen thus, even following the Literal Rule of interpretation of statutes, the term “survivorship” in sub-Section (2) of Section 211, as opposed to “succession” or “inheritance”, clearly indicates that the exception carved out in the said sub-section does not operate in respect of succession under the *Dayabhaga* School or to succession on demise of the testator in respect of his self-acquired property under the *Mitakshara* School.
51. Even if a purposive construction is to be lent to the said sub-section, the Legislative intent is clear. The primary purpose of the provisions of the Succession Act, insofar as those relate to testamentary succession, is to provide for the modalities to give effect to the intention of the late

lamented in their last Will and testament. However, it is trite law that one cannot confer more than one has. In case of devolution of the estate by survivorship under the *Mitakshara* School of Hindu law, a coparcener acquires title in the coparcenary ancestral property by birth, even during the lifetime of his predecessor. Thus, when the said predecessor dies intestate, only his exclusively self-acquired property devolves upon such demise on his heirs. Thus, by executing a Will, the said predecessor, if governed by the *Mitakshara* School, can only provide for the modalities of distribution of his self-acquired property which he had title to during his lifetime. However, he cannot provide for the distribution of coparcenary ancestral property, to which his heirs (also coparceners) had title since their birth by survivorship, to defeat such pre-acquired rights of his heirs in the ancestral coparcenary property.

- 52.** It is precisely for this reason that sub-Section (2) of Section 211 of the Succession Act, which is intended to be an exception to the general provisions of sub-Section (1), carves out a protection from the investiture of property and ostensible title on the executor under sub-Section (1) in respect of the properties in which vested rights by survivorship have already been created in favour of other coparceners.
- 53.** Thus, sub-Section (2) of Section 211 is intended by the Legislature primarily to protect vested rights by survivorship applicable in case of ancestral coparcenary property of Hindus belonging to the *Mitakshara* School of Hindu law and, by necessary implication, cannot have any bearing upon succession/inheritance upon demise of the testator in

respect of the *Dayabhaga* School or self-acquired properties of the testator.

- 54.** Any contrary construction of Section 211, by treating the exception under sub-Section (2) thereof in respect of survivorship to include all shades of succession/inheritance, would render sub-Sections (1) and (2) thereof mutually exclusive and destructive of each other, which cannot be the Legislative intent by any stretch of imagination. Thus, a purposive and harmonious construction of the two sub-sections clearly favours the interpretation as discussed above.
- 55.** Viewed from such perspective, since the testator Sunil Kumar Roy was a Bengali Hindu governed by the *Dayabhaga* School of Hindu law, the bar under sub-Section (2) of Section 211 is not attracted at all.
- 56.** Thus, the appellant, as executor of the Will of late Sunil Kumar Roy, was clothed in the capacity of legal representative of the said testator and the suit property (which is the subject-matter of the said Will) vested in her, both simultaneously with the death of the testator.
- 57.** Accordingly, this issue is also decided in favour of the appellant, and it is held that the appellant has locus standi, in the capacity of executor and legal representative of the deceased testator late Sunil Kumar Roy, to maintain the application under Order XXI Rules 97 to 101 of the CPC in respect of the decretal property, which is the subject-matter of the Will.

58. Whether the judgment resistor/appellant is bound by the decree passed against the judgment debtor-companies and the undertaking given by the said judgment debtors to vacate the property, since the judgment resistor was a Director of one of the judgment debtor-companies

59. The appellant has taken a plea in her application under Order XXI Rules 97 to 101 that she relinquished her Directorship of one of the defendant-Companies in the year 2011, that is, much before the eviction decree being passed by the First Appellate Court on February 16, 2023. However, even assuming she remained a Director of the Company thereafter, the defendant-Companies, being independent juristic entities in the eye of law, a Director thereof cannot be said to have co-extensive interest with the defendant-Companies, since, by dint of Directorship, the appellant could not have title to the assets of the Company, nor could be equated in her individual capacity with the said juristic entities.

60. Even otherwise, the claim staked in the property by the appellant in her application under Order XXI Rules 97 to 101 is purely on the strength of being an executor and legatee of the last Will and testament of Late Sunil Kumar Roy, through whom the respondent and his deceased mother, the original decree holder, claim interest. By dint of Section 227 of the Succession Act, the probate, if and when granted, would relate back to the death of the testator and validate all the acts of the executor from the testator's demise. Also, under Section

211 of the Succession Act, the property vests in the appellant as executor and legal representative of the deceased. Thus, the premise of the right, title and interest claimed by the appellant is in the capacity of a third party to the suit and the decree, and not through or under the judgment debtor-companies. Accordingly, neither the eviction decree nor the undertaking given by the judgment debtors before any court of law to vacate the property could or can bind the appellant in any manner whatsoever.

- 61.** Hence, this issue is decided in favour of the appellant as well, holding hereby that neither the eviction decree nor the undertaking given by the judgment debtor companies is binding on the appellant in her capacity as an executor and legatee as well as legal representative of the estate of the deceased testator, which is the very premise of her claim in the application under Order XXI Rules 97 to 101, CPC.

CONCLUSION

- 62.** On the basis of the above findings, we come to the conclusion that the findings and conclusions of the learned executing court as to the application of the appellant under Order XXI Rules 97 to 101 of the Code of Civil Procedure being not maintainable are based on erroneous interpretation of law and, thus, vitiated. Although the appellant has sought to argue that the executing court came to a finding that the Will was a product of forgery without any basis, we cannot agree with the same, since the portion, where the narrative in the impugned order records that the Will is forged, is a part of the

submission made by the respondent before the executing court and not the finding of the court. If it were to be a finding, obviously it would be *ex facie* perverse, being based on no material or reason whatsoever.

- 63.** We make it clear that since the executing court dismissed Miscellaneous Case No. 30 of 2024 only on the preliminary ground of maintainability and as we are of the considered opinion, on the basis of the above discussions, that such finding was erroneous and the application is very much maintainable at the instance of the appellant, we do not intend to go into the merits of the said application, which would have the unsavoury effect of usurping the jurisdiction of the executing court and, in the process, depriving both parties of one forum.
- 64.** Accordingly, FMAT No. 216 of 2025 is allowed on contest, thereby setting aside the impugned order (deemed decree), being the Order dated August 14, 2024 passed by the learned Civil Judge (Senior Division), Second Court at Barasat, District – North 24 Parganas in Miscellaneous Case No. 30 of 2024, arising out of Title Execution Case No. 12 of 2023, and remanding Miscellaneous Case No. 30 of 2024 to the said executing court for re-adjudication on merits.
- 65.** The learned executing court shall, upon giving adequate opportunity to both parties to adduce evidence and to argue their respective cases, re-adjudicate Miscellaneous Case No. 30 of 2024 on merits in the light of the observations made above.

- 66.** Due to the lapse of considerable time in pendency of litigation, we express sincere hope and trust that the learned executing court shall expedite the hearing of the matter as far as the business of the said court permits.
- 67.** CAN 2 of 2025 is consequentially disposed of.
- 68.** Interim orders, if any, stand vacated.
- 69.** There will be no order as costs.
- 70.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)