

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

HEARD ON: 24.07.2025

DELIVERED ON: 24.07.2025

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

C.O. 2571 of 2025

Abdul Chhatter Biswas & Others

Vs.

Cheyenuddin Mondal & Others

Appearance:-

**Mr. Partha Pratim Roy,
Ms. Poulami Chakraborty,
Mr. Saikat Gayen**

.....For the Petitioners.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. This application under Article 227 of the Constitution of India is at the instance of the decree holders and is directed against an order no.29 dated 17.01.2025 passed by the learned Civil Judge (Jr. Division), 3rd Court at Krishnagar, Nadia in Title Execution Case No.9 of 2023.
2. By the order impugned, the execution case stood dismissed on contest upon holding that the same is not maintainable.
3. Mr. Roy, learned advocate appearing for the petitioners, submits that the petitioners filed a suit for permanent injunction. The learned Trial Judge passed a decree declaring the title of the petitioners and restraining the opposite parties from creating any disturbances in the peaceful possession of the plaintiffs over the schedule mentioned suit property and also from

entering into the scheduled suit property as well as from ousting the plaintiffs therefrom.

4. Mr. Roy further submits that the said decree was put into execution and the learned Judge of the Executing Court dismissed the execution case. Mr. Roy submits that Order 21 Rule 32 of the Code of Civil Procedure does not contemplate actual violation of the decree for permanent injunction for the decree holder. He places reliance upon the decision of the Hon'ble Supreme Court in the case of ***Jai Dayal & Ors. Vs. Krishan Lal Garg & Ors.*** reported at ***AIR 1997 SC 3765*** in support of his contention that the object behind Order 21 Rule 32 is to see that the decree holder is not driven to another round of adjudication of the rights in the second suit to be settled afresh.

5. The petitioners herein filed a suit for permanent injunction being Title Suit No.259 of 2019. The said suit was decreed on contest by a judgment and decree dated April 21, 2023 thereby restraining the defendant/opposite parties herein by a decree of permanent injunction from creating any disturbances in the peaceful possession of the petitioners over the schedule mentioned suit property and also from entering into the scheduled suit property as well as from ousting the plaintiffs therefrom. Alleging that the opposite parties are violating the decree for permanent injunction, the petitioners have put the decree into execution giving rise to Title Execution Case No.9 of 2023.

6. Order 21 Rule 32 of the Code of Civil Procedure provides the mode in which a decree for permanent injunction is to be executed. For better appreciation

of the issue involved in the civil revision application, the provisions of Order 21 Rule 32 of the Code of Civil Procedure is extracted hereinafter:

“32. Decree for specific performance for restitution of conjugal rights, or for an injunction (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both”.

7. On a bare reading of sub rule (1) of Rule 32 of Order 21, it is evident that where the party against whom a decree for an injunction has been placed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in case of an injunction by his detention in the civil prison, or by the attachment of his property, or by both. Thus, a decree for permanent injunction can be enforced in case the judgment debtor had an opportunity of obeying the decree and had wilfully failed to obey it by detention in civil prison or by the attachment of his property or by both.
8. From the tabular statement filed in the execution case which has been annexed at page 23 of the civil revision application, this Court finds that under column 10, i.e. the relief claimed, it has been stated as follows:

“a bailiff may be appointed who will go to the local and upon beating drums and posting flags in the four corners of the schedule property and thereby proclaim by shouting aloud that the defendant is hereby permanently restrained from creating any disturbance in the peaceful possession of the plaintiffs over the schedule mentioned suit property”

9. From the relief prayed for under column 10 of the tabular statement, it appears to this Court that the decree holder/petitioners herein have sought

for a direction upon the bailiff to go to the scheduled suit property and thereby proclaim by shouting by stating that the defendant is permanently restrained from creating any disturbance in the peaceful possession of the plaintiffs over the schedule mentioned suit property. Such a relief is not contemplated under the provisions of Order 21 Rule 32 of the Code of Civil Procedure as observed hereinbefore unlike the case of Order 21 Rules 35 and 36.

10. Since the petitioners have put the decree for permanent injunction into execution, it goes without saying that the provisions applicable in such a case would be the provisions of Order 21 Rule 32 of the Code of Civil Procedure only.
11. For the reasons as aforesaid, this Court holds that the learned Judge of the Executing Court was right in dismissing the title execution case.
12. In the case of ***Jai Dayal (supra)***, a decree for permanent injunction and also for mandatory injunction from blocking the passage of 5 ft. between the house of the appellant therein and that of the respondents and for removal of obstruction was passed. The said decree was put into execution by the provisions of Order 21 Rule 32 and by an order passed in the said execution case, the respondent had removed the obstruction and consequently the execution case was disposed of with the finding that the obstruction was removed.
13. It was the admitted position in the said decision that subsequently a shop was constructed which created obstruction to the passage in question and it completely blocked the passage. In the background of such facts, the Hon'ble Supreme Court held that if the decree holder makes any construction clubbing the other adjacent property, the property which is

part of the subject matter in the earlier suit, a party cannot be permitted to drive the decree-holder for another round of adjudication of the rights in the second suit to be settled afresh. The facts in case of *Jai Dayal (supra)* being clearly distinguishable cannot come to the aid of the petitioners in the case on hand.

14. For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.
15. Accordingly, C. O. No.2571 of 2025 stands dismissed.
16. There shall be, however, no order as to costs.
17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

AB AR(Ct.)