

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

CO 2621 of 2025

Chandra Mohan Khandewal

Versus

Smt. Purabi Mahata & Ors.

For the petitioner	:	Mr. Kartick Kr. Bhattacharya Ms. Papiya Naskar
For the opposite party	:	Mr. Debasish Roy, Sr. Advocate Mr. Souvik Sonkar
Heard on	:	25.07.2025
Judgement on	:	July 25, 2025

Hiranmay Bhattacharyya, J.:

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against order dated June 20, 2025 passed by the learned Civil Judge (Jr. Division), Dubrajpur, Birbhum in Title Suit No. 62 of 2007. By the order impugned the application under Section 151 of the Civil Procedure Code praying for stay of all further proceedings of Title

Execution No. 17 of 1976, pending before the learned Civil Judge (Jr. Division), Dubrajpur, Birbhum, till the disposal of the partition suit in final form stood rejected.

2. Mr. Bhattacharya, learned advocate appearing for the petitioner submits that the petitioner has filed a suit for declaration of his title, partition and for permanent injunction in respect of 10 decimals of plot no. 4074 within Mouza – Dubrajpur in the district of Birbhum. He submits that the opposite parties herein are trying to evict the petitioner from the suit property which is involved in the partition suit by way of execution of an eviction decree obtained against the petitioner by the opposite parties herein.

3. Mr. Bhattacharya, learned advocate appearing for the petitioner submits that in the instant suit an order of status quo with regard to possession is still in subsistence. He, therefore, submits that the petitioner cannot be dispossessed by way of execution of the eviction decree.

4. Mr. Roy, learned Senior Advocate appearing for the opposite parties submits that after a contested hearing, an eviction decree has been passed against the petitioner herein and such decree has already attained finality. He further submits that the said decree was put into execution sometimes in the year 1976. He further submits that the petitioner filed an application under Section 47 of the Civil Procedure Code which also ended in

dismissal. He, therefore, submits that the title execution case for executing the eviction decree cannot be stalled merely on the ground of pendency of a suit for partition. He further refers to the decision in the case of *India Umbrella Manufacturing Co. & Ors. Vs. Bhagabandei Agarwalla & Ors.* reported in (2004) 3 SCC 178 and in the case of *Pramod Kumar Jaiswal & Ors. Vs. Bibi Husn Bano & Ors.* reported in (2005) 5 SCC 492 in support of his contention that assignment of interest in respect of a part of the property does not amount to merger of interest.

5. Heard the learned advocates for the parties and perused the materials placed.

6. The predecessor-in-interest of the defendants of this suit previously instituted an eviction suit being T.S.No. 111 of 1974 against the predecessor-in-interest of the plaintiffs herein which was decreed. The said decree was affirmed upto this Hon'ble Court in Second Appeal. The eviction decree was put into execution giving rise to Title Execution Case No. 17 of 1976.

7. The petitioner claims that though his predecessor was a tenant in T.S.No. 111 of 1974 under the predecessors of the opposite parties but now the petitioner has become a co-sharer of the suit property by virtue of the registered deed of 2007 and filed a suit for partition being T.S.No. 62 of 2007.

8. The petitioner filed an application in T.S.No. 62 of 2007 praying for stay of Title Execution Case no. 17 of 1976 which stood rejected by the impugned order.

9. In order to decide the issue as to whether the Execution case initiated for execution of an eviction decree can be stalled on the ground of pendency of the partition suit, it would be profitable to consider the proposition of law laid down by the Hon'ble Supreme Court.

10. In India Umbrella Manufacturing Co. (supra) it has been held that in order to bring the tenancy to an end, the merger should be complete i.e., the interest of the landlord in its entirety must come to vest and merge into the interest of the tenant in its entirety. When part of the interest of the landlord or the interest of one out of many co-landlords-cum-co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished and in such a case the doctrine of merger within the meaning of Section 111(d) of the Transfer of Property Act is not attracted.

11. The petitioner herein claims to be a co-sharer in respect having 1.5 decimals of the plot no. 4074 by virtue of purchase from the heirs of Nirmal Chowdhury who was not co-sharer of the suit plot. The petitioner also claims to have purchased a portion of share of Haripada.

12. The petitioner has filed the instant suit for partition and the learned trial judge by an order dated January 11, 2011 passed an

order of status quo with regard to the suit till the disposal of the suit. It is not in dispute that the petitioner had suffered a decree of eviction which has already attained finality. The said decree has been put into execution giving rise to Title Execution Case No. 17 of 1976. The petitioner also filed an application under Section 47 of the Civil Procedure Code praying for dismissal of the execution case which also ended in dismissal.

13. Mr. Bhattacharya, learned advocate appearing for the petitioner would contend that the suit for partition is at the evidence stage.

14. In ***T. Lakshmipathi v. P. Nithyananda Reddy*** reported at (2003) 5 SCC 150 the Hon'ble Supreme Court after noting the provisions of Section 105 and 111 of the Transfer of Property Act came to the conclusion that there is no determination of the lease in terms of Section 111 (d) of the Transfer of Property Act where a tenant confers only partial ownership interest. After referring to the decision of the privy council and the decisions of the Hon'ble Supreme Court it was held that the lease cannot be said to have been determined by merger so long. Interests of lessee, the lesser interest and that of the owner the larger estate do not come to coalesce in full.

15. In ***Pramod Kumar Jaiswal and others*** (supra) the Hon'ble Supreme Court observed that the position of law has been correctly stated in *T. Lakshmipathi v. P. Nithyananda Reddy* and

approved the principle of law laid down in the aforesaid decision. In the case on hand the petitioner claims to be a co-sharer by virtue of purchase from one of the co-landlords-cum-co-owners. Thus, the doctrine of merger cannot be applied to the case on hand and the petitioner herein shall be bound by the eviction decree. In view of the aforesaid discussion this Court is of the considered view that the execution case cannot be stayed till the disposal of the partition suit in final form.

16. It is not the case of the petitioner that he has acquired the ownership right in respect of the entire property. Thus, the question of merger does not arise in the case on hand. Mere pendency of a suit for partition between the co-sharer of the suit property cannot be a ground for stalling an execution proceeding arising out of an eviction decree.

17. The learned trial judge was right in rejecting the prayer for stay of the execution case. This court does not find any reason to interfere with the same.

18. Accordingly, CO 2621 of 2025 stands dismissed.

(Hiranmay Bhattacharyya, J.)