

22.09.2025
Item 1369 ML.
Court No.6.
AB

C. O. 2709 of 2025

**Kamala Bhattacharjee & Anr.
Vs
Suman Ganguly & Anr.**

Mr. Haradhan Banerjee,
Mr. Amitaba Pain,
Mr. Partha Pratim Mukhopadhyay,
Mr. Vivek Tripathi,
Mr. Suresh Kr. Sahoofor the Petitioners.

Ms. Shohini Chakraborty,
Mr. Koushik Bhattacharya
Mr. Suranjan Mondal,
Ms. Gargee Acharya Biswas,
Ms. Moushumi Biswas
.....for the Opposite Parties.

This matter was taken up for hearing upon being mentioned by Mr. Banerjee, learned advocate for the petitioners as an interconnected matter was also being fixed for hearing today.

With the consent of the learned advocates for the respective parties, this civil revision application is taken up for hearing by treating the same as on day's list.

Mr. Banerjee, learned advocate appearing for the petitioners, prays for leave to file supplementary affidavit.

Leave is granted to file supplementary affidavit. The supplementary affidavit filed in Court today is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the judgment debtor and is directed against an order no.2 dated

October 1, 2024, passed by the learned Civil Judge (Senior Division), 1st Court, Barasat in Misc. Execution Case No.56 of 2024 arising out of Title Suit No.266 of 2011.

By the order impugned, the miscellaneous case under Section 47 of the Code of Civil Procedure stood dismissed.

Mr. Banerjee, learned advocate appearing for the petitioners, submits that the opposite parties filed a suit for specific performance of contract and for other consequential reliefs before the learned Civil Judge (Junior Division), First Court at Barasat. Thereafter, pursuant to an application for amendment of the plaint being filed, the prayer for amendment was allowed resulting in ouster of the pecuniary jurisdiction of the learned Civil Judge (Junior Division).

Mr. Banerjee submits that thereafter the learned Civil Judge (Junior Division), First Court at Barasat transferred the suit to the Court of the learned Civil Judge (Senior Division), First Court at Barasat.

Mr. Banerjee submits that an order for transfer of the suit from one Court to another can be passed only by the District Judge in exercise of power under Section 24 of the Code of Civil Procedure as well as the High Court. He submits that no order for transfer of the suit from the Court of the learned Civil Judge (Junior Division) to the Court of the learned Civil

Judge (Senior Division) could be passed in exercise of powers under Section 24 of the Code of Civil Procedure by the learned Civil Judge (Junior Division).

He submits that the learned Trial Judge after allowing the prayer for amendment transferred the suit to the Court of the learned Civil Judge (Senior Division). He submits that since the order of transfer, is without jurisdiction, all proceedings thereafter before the Court of the learned Civil Judge (Senior Division) are also without jurisdiction. He submits that the decree passed by the learned Trial Judge as well as the decree passed by this Hon'ble Court under Section 96 of the Code of Civil Procedure is nullity in the eye of law.

Ms. Shohini Chakraborty, learned advocate appearing for the opposite parties, submits that in course of hearing of the first appeal before this Hon'ble Court, the petitioners raised the issue that the decree passed by the learned Trial Judge was without jurisdiction. She submits that before the Hon'ble Division Bench, the petitioners raised an issue that the petitioners filed two suits, one before the learned Civil Judge (Jr. Division) and the other before the learned Civil Judge (Sr. Division). She submits that the Hon'ble Division Bench, after taking note of the submissions of the respective parties, observed that the amendment cannot be challenged at this stage and, accordingly, rejected the prayer.

In reply, Mr. Banerjee submits that the petitioners may be estopped from challenging the order of amendment by virtue of the order of the Hon'ble Division Bench, but the question of jurisdiction goes to the root of the matter and it is well settled that the same can be raised at any stage and even at the stage of execution by filing an application under Section 47 of the Code of Civil Procedure.

Heard learned Counsel for the respective parties and perused the materials placed.

The learned Judge of the Executing Court after going through the records available before the said Court took note of the fact that in the reverse page of the plaint, it has been duly endorsed by the learned Civil Judge (Jr. Division) that the plaint has been returned as the valuation of the property is beyond its pecuniary jurisdiction.

Mr. Banerjee, learned advocate appearing for the petitioners, contends that such recording is contrary to the order no.1 dated 30.04.2011 passed by the learned Civil Judge (Sr. Division), First Court at Barasat.

The learned Executing Court took note of the endorsement made by the learned Civil Judge (Jr. Division) on the reverse page of the plaint that the plaint has been returned and the order passed by the Civil Judge (Senior Division) that he received the records upon transfer. The learned Judge of the

Executing Court held that the plaint was returned as the valuation of the suit property was beyond its pecuniary jurisdiction and the learned Civil Judge (Jr. Division) did not transfer the case records to the learned Civil Judge (Sr. Division) for disposal. Such finality does not suffer from perversity.

That apart, the petitioners did not raise such jurisdictional fact before the Hon'ble Division Bench in the first appeal. Scope of an appeal under Section 96 of the Code of Civil Procedure is very much wide and the petitioners ought to have raised the point of jurisdiction at that relevant point of time as it appears that the petitioners had already challenged the order allowing the amendment of plaint at the time of hearing of the first appeal.

For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

Accordingly, C. O. No.2709 of 2025 stands dismissed.

There shall be no order as to costs.

(Hiranmay Bhattacharyya, J.)