

17th January,
2025
(AK)
23

C.O 3132 of 2024

Sima Latua and others
Vs.
Sankar Prasad Mondal

Mr. Aniruddha Chatterjee
Mr. Deep Nath Roy Chowdhury
Mr. Dip Jyoti Chakraborty
Mr. Bhaskar Diwedi

...for the petitioners.

Mr. Abhilash Chatterjee
Mr. Sayan Kanjilal

...for the respondent.

1. The present challenge arises at the behest of a decree-holder in an eviction suit in connection with an order allowing the judgment debtor's application under Section 47 of the Code of Civil Procedure.
2. Heard learned counsel for the parties.
3. The eviction decree was passed in the year 2012.
4. In the year 2014, apparently an agreement for sale of the decretal property was entered into between the decree-holder-landlord and the judgment debtor.
5. As per the judgment debtor/opposite party, upon such execution of the agreement for sale, the judgment debtor also paid full consideration amount to the decree-holder, as such creating in indefeasible right in favour of the judgment debtor.

6. In the impugned order, the learned Judge of the executing court allowed the application under Section 47 on two grounds.
7. First, that in view of the agreement entered into between the parties post-decree, the decree has become inexecutable.
8. A further ground was that since further construction of stories have been made in the suit building subsequent to the passing of the decree, the subject matter of the suit has altered.
9. Upon a careful consideration of the materials on record and the impugned order, this court is of the opinion that both the grounds attributed to allowing the Section 47 application are not tenable in the eye of law.
10. First, the decretal property comprised of one pucca West-facing shop room on the ground floor of a then two-storied building.
11. Thus, the eviction decree and the consequential execution case are confined to the decretal property, which is a shop room standing on the ground floor.
12. Hence, construction of additional floors does not make a deviation or alteration in the subject-matter of the tenancy.
13. Secondly, an agreement for sale, as clearly provided in Section 54 of the Transfer of Property Act, does

not by itself confer or create any title in favour of the agreement holder.

14. Even if the judgment debtor's contention of payment of money is correct, in the absence of any valid registered sale deed, no title has passed in favour of the judgment debtor.
15. More importantly, till date, no suit has been filed by the judgment debtor for specific performance of such purported agreement for sale of the year 2014.
16. Hence, the agreement at best created an actionable claim in favour of the judgment debtor which has not been exercised by the latter.
17. Thus, under no stretch of imagination can it be said that either of the two grounds as indicated above rendered the eviction decree inexecutable.
18. Accordingly, C.O. 3132 of 2024 is allowed on contest, thereby setting aside the impugned order being Order No.52 dated July 3, 2024 passed in Miscellaneous Case No.12 of 2023 arising out of Title Execution Case No. 10 of 2022 (from Title Suit No.150 of 2008) passed by the learned Civil Judge, Junior Division, Second Court at Uluberia, District-Howrah.
19. The executing court shall proceed with the execution case as expeditiously as possible.
20. There will be no order as to costs.

21. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)