

10th November,
2025
(AK)
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F.M.A.T 389 of 2025
IA No: CAN 1 of 2025

Dharamshila Debi
Vs.
Sri Ramkumar Singh and others

Mr. Partha Pratim Ray
Mr. Partha Sarathi Chatterjee
Mr. Debayan Roy

...for the appellant.

1. The present appeal has been preferred against an order (deemed decree) whereby the appellant's application under Order XXI Rule 58 of the Code of Civil Procedure was dismissed.
2. Learned counsel for the appellant submits that the learned Trial Judge failed to take into consideration that the present appellant/judgment resistor and her husband, the judgment debtor, purchased respective shares of the decretal property from the vendor.
3. It is submitted that whereas the money decree sought to be executed was passed in respect of the portion of the property/share purchased by the judgment debtor/husband, in the tabular statement filed in the execution case, the decree-

holder has also sought consequential recovery of possession of the property.

4. It is argued that in the absence of any demarcation between the shares of the present appellant and the judgment debtor/husband, there is every possibility that in the garb of possession, the share of the present appellant/judgment resistor would also be usurped by the decree-holder by dint of the deemed decree passed by the executing court.
5. As such, it is submitted that the appeal should be admitted, as the executing court erred in law in dismissing the application under Order XXI Rule 58 of the Code.
6. However, we find from the papers before us that the entire plaint case was confined to the property purchased by the judgment debtor/husband of the present appellant.
7. The premise of the plaint case was that despite a sale of the decretal portion of the property having been effected in favour of the judgment debtor by the decree holder, the former did not pay the consideration amount which was sought to be recovered by the plaintiff/decreet-holder by dint of the suit.

8. As such, there could not be any doubt or iota of hesitancy in the mind of the court at any stage of the proceeding as to the exact extent of the decretal property, which is confined to the extent of the share of the judgment debtor and does not extend to the rest of the share in the property belonging to the judgment resistor/appellant/wife.
9. Even in the impugned deemed decree, the executing court has clarified that the property purchased and held in the name of the judgment debtor under Deed No.2161/1997 is liable to be attached for satisfaction of the decree, thus making it amply clear that there cannot be any encroachment, insofar as the execution of the decree is concerned, into the share of the self-same immovable property which is owned by the present appellant.
10. Insofar as the apprehension as regards possession in the mind of the present appellant, Order XXI Rule 54 onwards clearly provides that the mode of execution of a money decree would be by way of attachment and subsequent sale of the property of the judgment debtor and thereafter appropriating the sale proceeds to meet the money decree.

11. Possession, as such, is not one of the modes of execution of a money decree.
12. In any event, the tabular statement seeking attachment and sale and further recovery of the decretal amount, if necessary with police help, does not have any special prayer indicating recovery of possession of the property.
13. In column 11 of the tabular statement filed in connection with the execution case, the mode in which assistance of the court is required has been specified to be recovery of the decretal amount with interest and, till recovery of the amount, by attachment of the immovable and movable properties of the judgment debtor and thereafter sale of the same to recover the decretal amount, if necessary with police help.
14. Although the expression “police help” has been used, none of the statements in the execution case or the tabular statement filed therein indicate any prayer for recovery of physical possession of the property, thus, belying the premise of the arguments of the appellant.
15. As such, we do not find any illegality in the impugned deemed decree passed by the executing court rejecting the application of the judgment

resistor/appellant under Order XXI Rule 58 of the Code of Civil Procedure.

16. Accordingly, FMAT 389 of 2025 is dismissed under XLI Rule 11 of the Code of Civil Procedure.
17. Consequentially, CAN 1 of 2025 is also dismissed.
18. There will be no order as to costs.
19. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)