

7th March,
2025
(AK)
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C.O 3747 of 2024

Bhagirath Das and another
Vs.
Chaina Rakshit

Mr. Soumik Ganguli

...for the petitioners.

1. The present revisional application has been preferred by the judgment debtor in a decree for declaration and permanent injunction restraining the judgment debtors/petitioners from disturbing the peaceful possession of the decree-holder/opposite party in respect of the suit premises.
2. In the execution case levied by the decree holder, it has been alleged that the petitioners are trying to disturb the possession of the decree-holder by putting a tin gate on one side of the '*Kha*' schedule property, which is a part of the decretal property.
3. In support of such execution case, a local inspection was sought to ascertain whether any such gate has been installed and on ancillary points.
4. Learned counsel appearing for the judgment debtors/petitioners submits that the decree-holder is trying to make out a new cause of action in

execution, thereby going behind the decree, which is not permissible in law.

5. However, upon a perusal of the decree it is seen that, *inter alia*, a decree of declaration was granted along with a permanent restraint order whereby the judgment debtors were restrained from disturbing the peaceful possession of the plaintiff in respect of the suit property.
6. Order XXI Rule 32(5) of the Code of Civil Procedure clearly empowers the executing court, over and above the other measures for violation of an order of injunction such as attachment etc., in lieu of or in addition to all or any of the said processes, to direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the court at the cost of the judgment debtor and, upon the act being done, the expenses incurred to be ascertained and directed to be recovered as if they were included in the decree.
7. Hence, the executing court acted well within its powers in granting the prayer for local inspection to ascertain whether any gate has been installed, which is in aid of the execution case itself.
8. I do not find that the learned executing court went beyond its jurisdiction in such capacity in passing the said direction, since the executing court can very well pass necessary directions for removal of

such tin gate, if at all installed to block the ingress and egress of the decree-holders and consequentially to disturb the possession of the decree-holder in respect of the decretal premises.

9. Hence, there is no illegality or irregularity and /or jurisdictional error in the impugned order.
10. Accordingly, C.O. 3747 of 2024 is dismissed, thereby affirming the impugned order bearing Order no.116 dated August 31, 2024 passed by the learned Civil Judge, Junior Division, First Court, Sadar at Bankura in Judicial Miscellaneous Case no.84 of 2018 in connection with Title Execution Case No.05 of 2018 arising out of Title Suit No.74 of 2003.
11. There will be no order as to costs.
12. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)