

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

CO 235 of 2024

**Smt. Latika Das & Ors.
Vs.
Sri Goutam Das**

For the petitioners : Mr. Amit Kumar Basu
Mr. Pritam Roy

Heard on : 06.01.2025

Judgement on : 06.01.2025

PARTHA SARATHI SEN, J.:

1. In this revisional application as filed under Article 227 of the Constitution of India, the judgment and order dated 18.09.2024 as passed by the learned Additional District Judge, Fast Track Court, Siliguri in Civil Revision No. 1 of 2022 is impugned. By the said impugned order, the First Revisional Court affirmed the order No. 19 dated 09.12.2021 as passed by the learned Executing Court in Title Execution Case No. 1 of 2015 whereby and whereunder the judgment debtor's application under Section 47 of the Code of Civil Procedure was rejected.

2. For effective disposal of the instant revisional application, the facts leading to filing of the instant revisional application are required to be dealt with in a nutshell and those are as under:

- i) The plaintiff who is the opposite party in the instant revisional application filed Title Suit No. 23 of 2011 before the learned Civil Judge (Junior Division), Siliguri praying for eviction of the defendants (who are the petitioners before this Court) from the suit property stating, *inter alia*, that the defendants therein were in permissive occupation of the suit property and despite several requests made by the plaintiff had failed to quit and vacate and deliver up the khas and vacant possession of the suit property to the plaintiff.
- ii) The defendants who are the petitioners before this Court contested the said suit by filing their joint written statement. After completion of the pleadings of the parties and after recording of evidence, learned trial Court by its judgment and decree dated September 19, 2014 decreed the said suit in favour of the plaintiff on contest directing the defendants to be evicted from the suit property within 60 days from the date of passing of the said decree.
- iii) The plaintiff/decreed holder put the said decree into execution which was registered as Title Execution Case No. 1 of 2015.

- iv) In the said Title Execution case, the defendants/judgment debtors had filed an application under Section 47 of the Code of Civil Procedure challenging the executability of the said decree.
- v) In the said application under Section 47 of the Code of Civil Procedure, it had been contended on behalf of the judgment debtors that the said decree is not executable on the following grounds:
 - a) for non-payment of the adequate court fees in the said suit;
 - b) over the suit property there exists a residential structure which is in possession of the present judgment debtors as well as of some third parties;
 - c) while passing the decree in the said suit, no direction was passed for demolition of the structure;
 - d) the independent right, title and interest of the third parties who are in part possession of the building of the suit property has not yet been determined.
- vi) The Executing Court by its order no. 19 dated 9.12.2021 after considering the entire materials as placed before it found that the said application under Section 47 of the Code of Civil Procedure has got no merit at all and this dismissed the said application.
- vii) The said order was challenged before the First Revisional Court by preferring an application under Section 115A of the Code of

Civil Procedure which was, however, rejected by the said revisional court by passing the impugned order.

3. In course of his submission Mr. Basu, learned advocate for the revisionists/judgment debtors at the very outset draws attention of this Court to Section 47 of the CPC as well as to the provisions of Order 21 Rule 35 CPC. It is contended by Mr. Basu that while passing the order No. 19 dated 09.12.2021, the Executing Court had failed to visualize the true spirit of the aforementioned provisions of law, especially when in course of the proceeding under Section 47 of the CPC sufficient materials have been placed before the Executing Court that there exists a structure over the suit property.
4. It is further contended by Mr. Basu that the learned Executing Court while disposing the application under Section 47 of Code of Civil Procedure, had also failed to appreciate that in absence of a decree for demolition of immovable property as standing on the suit property, the suit for recovery of possession as passed against the judgment debtors is not executable. Mr. Basu further contends that the First Revisional Court had equally failed to visualize the aforementioned two provisions of law in its proper perspectives and thus wrongly dismissed the said revisional application by passing the impugned order.
5. In its next fold of submission, Mr. Basu, learned advocate appearing on behalf of the revisionists/judgment debtors further contends that prior to proceed with a execution case, it is obligatory on the part of the Executing Court to determine the independent right, title and interest of a third party

over the suit property as envisaged under the provisions of Order 21 Rules 97 to 101 of the Code of Civil Procedure and not by any separate suit and despite bringing such fact to the notices of both the Executing Court as well as the First Revisional Court, the said two Courts had failed to consider the true spirit of law. It is thus submitted that the order impugned as well as the order no. 19 dated 09.12.2021 as passed in Title Execution Case No. 1 of 2015 may be set aside while allowing instant revisional application.

6. For effective adjudication of the instant *lis*, this Court proposes to look to the provisions of Section 47 of the Code of Civil Procedure and the same is reproduced hereinbelow in verbatim:

“47. Questions to be determined by the Court executing decree. – (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I. – For the purpose of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II. – (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]”

7. This Court also proposes to peruse the provision of Order 21 Rule 35 of the Code of Civil Procedure and the same is also as under:

“35. Decree for immovable property. – (1) *Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.*

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”

8. Keeping in mind the aforementioned legislative provisions, this Court now intends to look to the factual aspects of this case.
9. Admittedly, in Title Suit No. 23 of 2011, the plaintiff who is the opposite party herein obtained a decree for recovery of possession against the judgment debtors by evicting the judgment debtors from the suit property.
10. The said decree was thereafter put into execution. As discussed hereinabove, in the said execution the judgment debtors who are the

petitioners before this Court had come forward with an application under Section 47 of the Code of Civil Procedure claiming that the said decree is not executable on the grounds mentioned in the foregoing paragraphs. Before the Executing Court by filing the said application under Section 47 of the Code of Civil Procedure, it has been contended that since there exists a residential structure over the decreetal property and since no decree has been passed for demolition of the said structure, the decree as passed in Title Suit No. 23 of 2011 is not executable pursuant to the provision of Order 21 Rule 35 of the CPC.

11. This court has meticulously gone through the plaint of Title Suit No. 23 of 2011 as well as the judgment and decree as passed by the learned Trial Court in the said suit. It appears to this Court that in the said suit it is the plaint case that the defendants were in permissive occupation of the suit property. It further appears to this Court that in the said suit, the defendants could not prove their right to occupy the suit property and thus, the learned trial Court decreed the suit in favour of the plaintiff directing eviction of defendants therefrom.
12. On perusal of the provisions of Order 21 Rule 35 CPC, it appears to this Court that the said provision deals with decree for immovable property. This Court is in respectful disagreement with the submission of Mr. Basu, learned advocate appearing on behalf of the revisionists/judgment debtors that for passing a decree for eviction of a licensee, the Court is duty bound to pass a decree for demolition of the structure.

13. In considered view of this Court, Order 21 Rule 35 of the CPC deals with the decree for delivery of an immovable property and it prescribes as to how such decree is to be executed i.e., by delivery of possession in favour of the decree-holder or in favour of a person who has been appointed to receive such delivery. This Court considers that the provisions of Order 21 Rule 35 of the Code of Civil Procedure does not envisage demolition of a structure over the suit property while passing of a decree for recovery of possession.
14. In view of such, this Court considers that finding in this regard by the Executing Court as well as the First Revisional Court are perfectly justified and this Court finds no reason to interfere with such findings.
15. So far as the contention of the present revisionists that there exists a third party interest over the decretal property and the same is required to be adjudicated first prior to proceeding with the execution is equally not acceptable to this Court since such a question is totally outside the scope of Section 47 of the Code of Civil Procedure.
16. So far as the question of payment of court fees is concerned, it appears that such issue has already been disposed of while passing the judgment and decree in the said suit and therefore, there is a very limited scope to agitate the self-same point in a proceeding under Section 47 of the Code of Civil Procedure.
17. Considering the entire facts and circumstances as discussed supra, this Court considers that not only the present application but also the application under Section 47 of the Code of Civil Procedure as filed by the

judgment debtors are mischievous, frivolous and harassing one and the same has been filed only to delay and drag the execution proceeding.

18. Consequently, this Court holds that the revisional application being **CO 235 of 2024** has got no merit at all and is thus dismissed.
19. There shall, however, be no order as to costs.
20. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)

Sourav
A.R. (Court)