IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.O.95 of 2024

With

CAN 1 of 2024

Shri Sandip Kumar Saha

Vs

Somanath Saha & Ors.

For the Petitioner : Mr. Surojit Nath Mitra, Sr. Adv.
Mr. Partha Pratim Roy,
Mr. Kushal Chatterjee,
Mr. Mohan Lal Banerjee,
Mr. Debrup Choudhury.

For the State : Mr. Saptangsu Basu, Sr. Adv.
Mr. Aniruddha Chatterjee, Sr. Adv
Mr. Krishna Das Poddar,
Mr. Abir Lal Chakroaborty.

Judgment reserved on : 16.01.2026

Judgment delivered on : 09.02.2026

SHAMPA DUTT (PAUL), J. :

1. The civil revision has been preferred against an order dated 9th August, 2023 passed by the Learned Judge, Bench VIII, City Civil

Court at Kolkata in Title Suit No. 1843 of 2005 whereby an application filed by the Petitioner/Defendant No. 1 abovenamed under Section 151 of the Code of Civil Procedure, 1908 to the extent that the Petitioner/Defendant No. 1's, prayer to forego and/or relinquish his allotted share in the suit property in favour of the opposite party abovenamed as adjustment towards the owelty money payable by the Petitioner/Defendant No. 1 in respect of his allotted share in the suit property **was rejected.**

2. The petitioner's contention is that the Learned trial Court has erred in holding that there was no scope to reopen the said decree. The Learned trial Court further failed to consider and/or appreciate that the Petitioner/Defendant No. 1 was neither financially sound nor capable in rendering payment of the owelty amount as assessed in the further Report of the Learned Engineer Commissioner and as such, the Petitioner/Defendant No. 1 had no impediment in law from foregoing and/or relinquishing his share of the allotted portion of the suit property in favour of other co-sharers for adjustment towards the owelty money payable by him.

3. The learned trial Court passed the impugned order by also failing to consider and/or appreciate the settled principles of law that owelty money payable consequent to a partition decree is to bring in equalisation of shares upon excessive allotment of suit property and the same is not in the nature of a debt and was therefore capable of being adjusted.

4. The learned trial Judge vide the impugned order finally held as follows:-

> *"It appears from the Hon'ble Court's order dated 25.04.2022, in connection with F.A.T no. 12 of 2022 that the Hon'ble Court has been pleased to refuse to interfere with the order passed by this court accepting the report of the Commissioner, on the observation that the entire suit property was under control of the defendant no.1 who has generated a considerable profit from the business and collection of rent of the premises and it was directed to draw the final decree as expeditiously as possible in terms of the Commissioner's Report.*
>
> *I have gone through the decision cited by the Ld. Advocate of the defendant no.1 and it appears to me that the facts narrated in the said decision is different from the facts and situation under which the defendant no. 1 has approached this court for modification.*
>
> *Since the Hon'ble Court has been pleased to refuse to interfere with the order passed by this court along with the direction to draw the final decree on the Ld.Commissioner's Report. I am of the view that* ***the same has reached to its finality and there is no scope to reopen the Final Decree and accordingly the prayer for modification stands rejected and the petition is thus disposed of."***

5. The opposite party in their written notes relying upon the judgments in ***Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman & Others reported in (1970) 1 SCC 670*** (Paragraph 6) and in ***Darshan Singh Vs. The State of Punjab reported in (2007) 14 SCC 262*** (Paragraph nos.16, 17, 20 and 21) have stated that in the instant case, **the final judgment and decree dated 20.11.2021 was confirmed by the Hon'ble High Court at Calcutta on 25.04.2022 and the same was confirmed by the Hon'ble Supreme Court of India on 26.09.2022. The said judgment and decree dated 20.11.2021 has now attained finality.**

6. Thus, as per the aforesaid judgments and finally by the Hon'ble Supreme Court of India, the said final judgment and decree in this case now cannot be reopened, as the same has been already affirmed by the Hon'ble Supreme Court of India on merits, in the year 2022.

7. It is further stated by the opposite parties/decree holders that the learned Executing Court now cannot go behind the said final judgment and decree. Further the Hon'ble High Court in exercise of its revisional jurisdiction also cannot vary the terms of the decree with regard to the owelty money that the petitioner/judgment debtor is liable to pay as per the final judgment and decree dated 20.11.2021 as the said final judgment and decree has been confirmed by the Hon'ble Apex Court and has already been put to execution.

8. From the Learned Special Officers report, the observation as to the ground floor in possession of the petitioner herein is as follows:-

> ***"7.*** *It is pertinent to mention that the entire ground floor including the garage is commercially used by the defendant no.1 and the entire first floor is under occupation of the several tenants."*

9. Thus in view of the observation of the Hon'ble Division Bench in F.A.T No.12 of 2022 in respect of the petitioners share, as noted in the order impugned, the prayer of the petitioner herein challenging the final decree, which was rejected upto the Supreme Court, and the order for drawing up of final decree having attained finality, the petitioner's prayer is as follows:-

> *"……….why the decree dated 20th November, 2021 should not be modified to the extent that the share of the portion of the suit property allotted to Petitioner/Defendant No. 1 being "Lot-B" thereof is reallotted by permitting the Petitioner to forego and/or relinquish his share of the allotted portion of the suit property being "Lot-B" thereof in favour of other co-sharers of the suit property in lieu of any other allotted portion having lower valuation to the extent that the owelty money payable by the Petitioner/Defendant No. 1 is adjusted therewith AND why the decree dated 20th November, 2021 should not be modified to the extent that the owelty money payable by the Petitioner/Defendant No. 1 in respect of his share of the allotted portion of the suit property being "Lot-B" thereof is adjusted by permitting the Petitioner to forego and/or relinquish his share of the allotted portion of the*

suit property being "Lot-B" thereof in lieu of any other allotted portion of the suit property having lower valuation……"

10. In ***Mrs. Ethel Lourdes D'Souza Lobo vs Lucio Neville Jude De Souza & Ors., in Civil Appeal No. 9202 of 2019, decided on September 19, 2022,*** the Supreme Court held:-

> ***"15.*** *……………………As to what is owelty, was explained by this Court in T.S. Swaminatha Odayar v. Official Receiver of West Tanjore8 in the following terms:*
>
> *"It therefore follows that when an owelty is awarded to a member on partition for equalization of the shares on an excessive allotment of immovable properties to another member of the joint family such a, provision of owelty ordinarily creates a lien or a charge on the land taken under the partition. A lien or a charge may be created in express terms by the provisions of the partition decree itself. There would thus be the creation of a legal charge in favour of the member to whom such owelty is awarded. If, however, no such charge is created in express terms, even so the lien may exist because it is implied by the very terms of the partition in the absence of an express provision in that behalf. The member to whom excessive allotment of property has been made on such partition cannot claim to acquire properties falling to his share irrespective of or discharged from the obligation to pay owelty to the other members. What he gets for his share is, therefore, the properties allotted to him subject to the obligation to pay such owelty and there is imported by necessary implication an obligation on his part to pay owelty out of the properties allotted to his share and a corresponding lien in favour of the members to whom such owelty is awarded on the properties which have fallen to his share."*
>
> ***16.*** *Owelty, then, is awarded to a member in proceedings of partition for equalization of the shares on "an excessive allotment of immovable properties to*

> *another member." The total amount which has to be distributed to the heirs as per their shares, therefore, includes inter alia, on the owelty sums paid in, by one who can claim entitlement to immovable property in excess of the share allocable to her or him."*

11. As such the petitioner's prayer for modification of the partition decree by permitting him to forgo/relinquish his share in favour of other co-sharers in view of other portion, being not in accordance with law stands rejected.

12. When **owelty money** (the money paid to equalize shares in a property partition) is not paid, it creates a legal charge or lien on the property allotted to the defaulting party. The recipient of the unpaid owelty can enforce this charge, leading to several legal consequences, including the potential attachment, sale, or re-auction of the property to satisfy the debt.

13. As such the petitioner's prayer for adjustment of owelty money will be governed by the rules relating to "owelty money" and if not paid, **the Court shall follow the due process of law.**

14. **Civil Revision 95 of 2024 along with CAN 1 of 2025 is dismissed**.

15. The executing Court to make all endeavour to complete the process of execution **within one month** from the date of this order, considering that the suit was instituted **20 years back.**

16. There will be no order as to costs.

17. Connected application, if any, stands disposed of.

18. Interim order, if any, stands vacated.

19. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul). J]