IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1927 OF 2026
Manoj Kumar Paul
VS.
Arabinda Paul & Anr.

With

CO 2937 of 2023
Arabinda Paul & Anr.
Vs.
Manoj Kumar Paul

For the Petitioner (in CO 1927 of 2026)and opposite party in CO 2937 of 2023	: Mr. Manoj Kumar Paul ..... (in person)
For the Opposite Party (in CO 1927 of 2026) and the Petitioners (in CO 2937 of 2023)	: Mr. Gopal Chandra Ghosh, Sr. Advocate Dr. Suravi Ghosh .... advocate
Reserved on	: 25.08.2026
Delivered on	: 25.11.2026

Hiranmay Bhattacharyya, J.:-

1. CO no. 2937 of 2023 (for short CO No. 1) is at the instance of the defendant and is directed against the Orders dated 20.12.2022 and 02.06.2023 both passed by the learned Additional District Judge, Second Court at Barrackpore, 24 Parganas (N) in Title Appeal No. 27 of 2022 arising out of Title Suit No. 111 of 2015.

2. By the Order dated 20.12.2022 the prayer for stay of operation of the judgment and decree passed in Title Suit no. 111 of 2015 stood rejected. By the Order dated 02.06.2023 the petition filed by the appellant in Title Appeal No. 27 of 2022/Petitioner in CO No. 1 praying for temporary injunction stood rejected.

3. CO 1927 of 2026 (for short CO No. 2) is at the instance of the decree holder and is directed against an Order dated 12.06.2026 passed by the learned Civil Judge (Junior Division, Bidhannagar, 24 Parganas(N)) in Title Execution Case no. 4 of 2023 arising out of Title Suit No. 111 of 2015. By the said order the application filed by the decree holder on 05.02.2026 praying for execution of the decree for permanent prohibitory injunction by deploying adequate police force stood rejected.

4. For the sake of convenience, the parties are referred to according to their status in the Title Suit.

5. Plaintiff filed a suit for declaration of Title Suit No. 111 of 2015 and for a further declaration that the defendant has no right to trespass or enter into the said property forcefully and illegally and for permanent injunction. The defendant contested the said suit by filing a written statement denying the material allegations contained therein. In the said written statement the defendant also set up a counter claim praying for a declaration that the deed of gift being no. 01679 of 2010 dated 15.03.2010 is null and void in the eye of law and for injunction restraining the plaintiff from giving any effect or further effect of the said deed of gift. The plaintiff contested the said counter claim by filing a written statement.

6. The learned Trial Judge by a judgment and decree dated 20.09.2022 decreed the said suit on contest and consequently dismissed the counter claim of the defendant.

7. Being aggrieved by the said judgment and decree, the defendant preferred an appeal being Title Appeal no. 27 of 2022. In the said appeal the

defendant filed an application praying for stay of operation of the judgment and decree passed in Title Suit No. 111 of 2015.

8. The learned Judge of the Appellate Court, by an order dated 20.12.2022, dismissed the application for stay of operation of the judgment and decree passed in the Title Suit. Thereafter, the defendant filed an application praying for temporary injunction in the appeal. The application for temporary injunction stood rejected by the order dated 02.06.2023 passed by the learned Judge of the First Appellate Court.

9. In the meantime the plaintiff had put the decree into execution giving rise to Title Execution Case no. 4 of 2023. In the said Execution Case the plaintiff filed an application on 05.02.2026 praying for police assistance for execution of the decree for permanent injunction. Such application stood rejected by the order dated 12.06.2026.

10. Plaintiff appearing in person contended that the learned Judge of the executing court failed to appreciate that executing Court had the jurisdiction to pass an order for police protection under Order 21 Rule 32 of the Code of Civil Procedure. In support of such contention he placed reliance upon a judgment of the Hon'ble Supreme Court delivered on 31.07.2017 in **Civil Appeal no. 9916 of 2017** arising out of Special Leave Petition (C) No. 3206 of 2014 in the case of **Raja Venkateswarlu & Anr. vs. Mada Venkata Subbaiah & Anr**. He also placed reliance upon a judgment of the Hon'ble High Court of Karnataka at Bangaluru in the case of **Nagamma and ors. vs. Gowramma** order passed on 24.04.2025 in writ petition no. 9306 of 2025. The plaintiff also placed reliance upon a judgment of the Hon'ble Madras High Court reported at **AIR 2008(NOC) 362 (Mad)** in the case of **P.A. Ashraf vs. A. L. Mujibar Rahaman & Ors.** support of his contention that an order of injunction can be implemented through police help.

11. Mr. Ghosh learned Senior Advocate appearing for the defendant seriously disputed the submission of the plaintiff appearing in person. He contended that a decree for permanent injunction may be enforced by way of detention

in civil prison or by attachment or both. He contended that the grant of police help to enforce the decree for permanent injunction is beyond the scope of Order 21 Rule 32 of the Code. He, thus, contended that the learned Judge of the Executing Court was right in rejecting the application filed by the plaintiff praying for deployment of adequate police force for execution of the decree for permanent prohibitory injunction. He, thus contended that CO No. 2 is liable to be dismissed without costs *in limine*.

12. Mr. Ghosh, learned Senior Advocate appearing for the defendant contended that since the defendant has preferred an appeal challenging the judgment and decree passed in Title Suit, the learned Judge of the Appellate Court ought to have passed an order of stay of operation of the judgment and decree passed in Title Suit No. 115 of 2015. He thus contended that the learned Judge of the appellate Court failed to exercise its jurisdiction by not passing an order of stay. He further contended that the defendant was using the "C" marked property as common area for ingress and egress and the plaintiff has illegally put padlock on the gate in order to deprive the petitioner of the right of ingress and egress through the said common passage. He thus contended that during the pendency of the appeal the plaintiff should be restrained by way of a temporary injunction from creating any obstruction in the user of the common passage by the defendant.

13. Mr. Pal, the plaintiff appearing in person, disputed the submission of Mr. Ghosh. He contended that the defendants have an alternative entry for ingress and egress to their own property and they are acting in violation of the decree for permanent injunction. He further contended that the decree for permanent injunction cannot be stayed without the appeal being heard on merits and no order for temporary injunction should be passed in order to nullify the decree for permanent injunction.

14. Heard the plaintiff appearing in person and Mr. Ghosh learned Senior Advocate for the defendant and perused the materials placed.

15. The learned Civil Judge, Junior Division, Bidhannagar decreed Title Suit no. 111 of 2015 by a judgment and decree dated 20.09.2022. The plaintiff namely Manoj Kumar Pal got a decree of declaration that he is the absolute owner of the suit property by virtue of the Deed of Gift being No. 01679 of 2010 and he also get a decree for permanent injunction against the defendant namely Arobindo Pal and another thereby restraining the defendants from interfering with the peaceful possession of the suit property and forceful entry into the said property. By the said judgment and decree the counter claim of the defendants stood dismissed on contest.

16. Being aggrieved by the said judgment and decree the defendants preferred Title Appeal no. 27 of 2022. The learned Judge of the Appellate Court by an order dated 20.12.2022 rejected the application for stay of operation of the judgment and decree passed in Title Suit upon holding that it is a fit case where the defendant/ appellant should pray for temporary injunction. The defendant/petitioner in CO No. 1 thereafter filed an application for temporary injunction which stood rejected by the order dated 02.06.2023.

17. The case made out by the defendant is that "B" and "C" marked area of the site plan of the deed of gift are meant for common user by both the brothers as per the direction of the donor/ mother but subsequently the plaintiff got the "C" marked property from the mother by practicing fraud and misrepresentation. It is the further case of the defendants that there is a gate for egress and ingress to the land and the defendants are using such gate for egress and ingress to their property and the plaintiff has put padlock on the said gate in order to deprive the defendants from exercising their right to use the "C" marked property as common area.

18. The learned Trial Judge passed a decree for permanent injunction restraining the defendants from interfering with the peaceful possession of the said property and forceful entry into the suit property which forms the subject matter of the deed of gift being no. 01679 of 2010 i.e., "C" marked property. The learned Judge of the appellate court after considering the site plan attached to the deed of gift, returned a factual finding that the

defendants have an alternative entry for egress and ingress to their property. In the light of the said factual finding the learned Judge of the appellate Court held that the balance of convenience and inconvenience is not in favour of the defendants. Mr. Ghosh learned Senior Advocate appearing for the defendants could not controvert such factual finding in course of hearing of the Civil Revision Application. For such reason this Court is not inclined to interfere with the order passed by the learned Judge of the appellate court rejecting the application for temporary injunction.

19. The plaintiff/decree holder filed the execution petition praying for restraining the judgment debtors from forcefully entering into the decretal property. The mode in which the assistance of the Court was sought appears to be with the help of Court bailiff failing which with the help of police. The learned Judge of the executing court by an order dated 29.11.2025 dismissed the execution case as not maintainable.

20. Plaintiff challenged the said order in CO 4494 of 2025.

21. Order 21 Rule 32 of the Code of Civil Procedure provides for enforcement of a decree for permanent injunction. Sub-rule (1) of Rule 32 of Order 21 of the Code states that where a party against whom a decree for injunction has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree for an injunction may be enforced by his detention in the civil prison or by the attachment of his property or both.

22. The expression “act required to be done” used in Order 21 Rule 32(5), however, enlarges the scope of the authority of the Court in executing the decree for injunction.

23. In **Sachi Prasad Mukherjee vs. Amarnath Roy Chowdhury** reported at **(1919) 46 Cal 105**, it was held that the Court may direct the act of removing an obstruction to be performed so far as practicable by the decree holder or some other person appointed by the Court. It was held therein that Order 21 Rule 32(5) applies to prohibitory as well as mandatory injunction.

24. However, a contrary view was expressed in **Hemchandra Naskar vs. Narendra Nath Basu** reported at **AIR 1934 Cal 402** wherein it was held that Order 21 Rule 32 clauses (1), (2) and (3) apply to both classes of injunction and enable the decree holder to put the judgment debtor into civil prison and to attach the judgment debtor property and by these means to compel him to obey the decree and clause (5) has no application to a simple prohibitory injunction. It was held that in case of a mandatory injunction clause (5) would often give the decree holder a complete remedy, but if a simple prohibitory injunction is disobeyed, a fresh cause of action arises for which adequate remedy, either by a mandatory injunction or in some other way has to be sought for in a suit.

25. In **Ram Charan Sikdar vs. Sm. Jogamaya Basu and another** reported at **AIR 1978 Cal 193**, it was held that an application under Order 21 Rule 32(5) was maintainable when the decree holder got a decree for permanent injunction and the Court would be competent to direct the removal of the admitted obstruction on the suit passage.

26. At this stage it would be relevant to point out that an “”Explanation” was inserted by the Amendment Act of 2002 after Order 21 Rule 32(5) with effect from July 1, 2002. The said “Explanation” declares that the expression “the act required to be done” covers prohibitory as well as mandatory injunction. Thus, the controversy as to the applicability of Order 21 Rule 32(5) in case of prohibitory injunction has been put to rest with the insertion of the Explanation. This Court accordingly holds that Court can ensure compliance of a decree for prohibitory injunction in a mandatory form or in any other way as far as practicable by the decree holder or any person appointed by the Court.

27. Record reveals that a co-ordinate bench in C.O. 4494 of 2025 passed an Order on 02.02.2026 observing that if the situation so arises that the decree holder requires protection by an order of mandatory injunction upon removal of encroachment allegedly made by the judgment debtors, the

decree holder would be at liberty to approach the executing Court by filing a proper application under the law.

28. Pursuant to the said observation the decree holder/plaintiff filed an application under Order 21 Rule 32(5) read with Section 151 of the Code of Civil Procedure praying for deployment of adequate police force to assist the decree holder in blocking the vacant area and other portions of the decretal property by constructing boundary wall to restrain the judgment debtors from entering into the decretal property.

29. The aforesaid application filed by the decree holder stood rejected on the ground that deployment of adequate police force is beyond the provisions of Order 21 Rule 32 of the Code of Civil Procedure.

30. In **P.A. Ashraf** (supra), it was held that in exercise of powers under Section 151 of the Civil Procedure Code, directions can be issued to the police to implement the decree of permanent injunction.

31. In **Nagamma** (supra) it has been held that an application under Order 21 Rule 32(5) read with Section 151 of the Code seeking police aid for implementation of the judgment and decree is maintainable and police can be directed to implement such decree.

32. In **Raja Venkateswarlu** (supra) the appellants therein approached the executing Court for execution of a decree for permanent injunction. In the execution proceeding police protection was sought for under Section 151 of the Code of Civil Procedure. The learned Executing Court granted such prayer and the Hon'ble High Court interfered with such order upon holding that the application could have been filed only under Order 21 Rule 32. The Hon'ble Supreme Court after noticing the provisions of Order 21 Rule 32(5) of the Code of Civil Procedure observed that merely because an application for police protection was filed only under Section 151 of the Code of Civil Procedure, it cannot be a reason for the High Court to reject it. The Hon'ble Supreme Court held that it is not disputed that the Executing Court has jurisdiction to grant police help in execution proceedings and restored the

order of the executing court after setting aside the order passed by the Hon'ble High Court.

33. After going through the impugned order this Court finds that the prayer for deployment of adequate police force was rejected only on the ground that the same is beyond the provisions of Order 21 Rule 32. This Court is of the considered view that the aforesaid finding runs counter to the proposition of law laid down by the Hon'ble Supreme Court in **Raja Venkateswarlu** (supra) and other judgments as stated hereinbefore. Accordingly, the order impugned dated 12.06.2026 passed in Title Execution Case no. 4 of 2023 is liable to be set aside.

34. Since the application for deployment of police force was rejected not on merits but for the reason that the same was beyond the scope of Order 21 Rule 32, this Court is of the view that such application should be remanded with a direction to decide the same on merits. This Court, however, refrains from making any comment as to whether the reliefs sought for in the said application falls within the scope of Order 21 Rule 32(5) and the learned Judge of the Executing Court shall be free to decide the same in accordance with law at the appropriate stage.

35. Record reveals that the judgment and decree passed in Title Suit No. 111 of 2015 is under challenge at the instance of the defendants in Title Appeal No. 27 of 2022. Thus, the decree passed in Title Suit is yet to attain finality. In the event the decree is executed during the pendency of the appeal, the appeal would become infructuous. The plaintiff prayed for an order of police assistance to enable the plaintiff to block the vacant area by construction of walls/boundary wall during the pendency of the Title Appeal no. 27 of 2022. If such application is decided at this stage, the appeal would become infructuous. For such reason this Court is inclined to modify the order dated 20.12.2022 passed in Title Appeal by passing an order of stay of all further proceedings in Title Execution Case no. 4 of 2023 as well as the hearing of the applications filed in the said execution case.

36. It is now well settled that when the judgment of the Court of first instance is appealed against, the judgment ceases to be *res judicata* and become *res subjudice*. In view thereof, this Court is of the considered view that the execution case should be stayed till the disposal of the Title Appeal.

37. For all the reasons as aforesaid Civil Revision Applications stand disposed of with the following directions.

(i) The order dated 12.06.2026 passed by the learned Civil Judge, (Junior Division), Bidhannagar in Title Execution Case no. 4 of 2023 is set aside. The application dated 05.02.2026 filed by the decree holder stand restored to its original file and number.

(ii) The Order dated 02.06.2023 passed in Title Appeal No. 27 of 2022 is not interfered with by this Court.

(iii) The Order dated 20.12.2022 passed in Title Appeal no. 27 of 2022 is modified by passing an order of stay of all further proceeding in Title Execution Case no. 4 of 2023 pending before the learned Civil Judge, Junior Division Bidhannagar as well as hearing of the applications filed in the said execution case till the disposal of the Title Appeal no. 27 of 2022.

38. There shall be, however, no order as to costs.

39. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)