

15.06.2026
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PA

CO 3766 of 2024

**Tapan Das & Ors.
Vs.
Malay Das & Ors.**

Mr. Prosenjit Mukherjee
Mr. S. Banerjee
Mr. Saptarshi Chakraborty
Mr. Sourav Pal
Mr. Jahangir Hossain
Mr. Raja Roy
Mr. Prosenjit Chongder

...for the Petitioners

Though an earlier date was fixed for passing order but the order could not be passed as the record was not placed. Today the record is taken up for passing order .

In the instant case the petitioner has challenged the impugned order dated 20.7.2023 passed by learned Civil Judge (Senior Division), additional Court, Chandernagore in Title Execution no. 336 of 2014, by which the court below had disposed of the said Title Execution Case on full satisfaction, relying upon the report submitted by Nazir Chandernagore, Sub Divisional Court and also report submitted by Chandernagore Police Station.

Opposite party no. 1 and 2 herein filed T.S. no. 145 of 1984 where they obtained a decree of

eviction in respect of “B” Schedule property to the plaintiff against the petitioners herein. Challenging the said judgment and decree, petitioner preferred an appeal which also got dismissed. The opposite party subsequently filed execution case which was renumbered as T.Ex no. 336 of 2014. Petitioners filed application under section 47 of the Code, in the said Execution case being Misc. Case no. 5 of 1993, which has also been dismissed. Said order of dismissal in connection with the Application under section 47 of the CPC has been confirmed by this High Court in CO no. 708 of 2004. The petitioner also filed Misc. Judicial Case under order XXI Rule 99-103 which was also dismissed. Challenging the order passed in Misc. judicial Case no. 21 of 2017 the petitioners preferred an appeal being SMAT No. 7/2022 before this High Court, which was ultimately dismissed vide order dated 17.7.2023.

Feeling aggrieved by the aforesaid impugned order, dated 20.7.2023 petitioners’ main grievance is that in terms of original judgment and decree the concerned Nazir entered into “B” Scheduled property to the plaintiff without any notice to the present petitioner and delivered possession of entire “A” and “B” schedule property to the Opposite parties herein, though the Opposite parties obtained decree for recovery of khas

possession in connection with “B” schedule property only. He further alleged that the concerned Nazir in connivance with the opposite parties/decreed holder and under the assistance of the concerned police officers rejected the oral objection of the petitioners and had delivered the entire land of “A” and “B” Schedule to the plaintiff in favour of the decreed holder, which is manifestly demonstrated in the execution report submitted by Nazir on 20.07.2023. Therefore the Petitioners contention is that the learned executing Court has gone beyond the scope of the original decree passed on 28.07.1987. The report of the Nazir is also absolutely contrary to the original decree and therefore the order impugned by which court below expressed full satisfaction on execution of the decree is liable to be set aside and the court below is required to be directed for the recovery of khas possession in respect of “B” schedule property to the plaintiff only in terms of decree.

During the course of hearing this court by its order dated 09.06.2025 directed the Executing Court to submit a report.

In the report the Executing court submitted that in the plaintiff's prayer for recovery of khas possession in respect of B schedule property which has been described in the decree as follow:-

“SCHEDULE-B

All that two corrugated tin shed brick wall room with an uncovered varandha with corrugated tin sheets, one service privy, one ring well situate on the south-eastern portion of plot no. 457, khaitan no. 303, Mouza-Chandernagore, Dist. Hooghly.”

The operative part of the decree specifically directed delivery of possession of scheduled ‘B’ property.

In the execution petition both Schedule ‘A’ and Schedule ‘B’ were duly mentioned

In the decree, “A” schedule property has been described as follows:-

“SCHEDULE-A

All the piece and parcel of land measuring 0.0635 acres with structure appertains to plot no. 457 of Khaitan No. 303 of Mouza Chandernagore, JL No.1, under P.S. Chandernagore, Dist. Hooghly, holding no. 489/477, ward no. 9 of Chandernagore Municipal corporation.”

The report submitted by court below discloses that the concerned Court officer had noted down in his report that he has delivered possession of two rooms by way of execution, wherefrom it is clear that two rooms which were identified as the “B” scheduled suit property were delivered in favour of the decree holder in presence of police personnel. It is further pointed out in the report that such delivery of possession by way of execution of decree was made without any objection raised by judgment debtor and no such objection pertaining to extent of schedule properties was raised by judgment debtor at the time of execution.

In view of aforesaid report submitted by court below, I find that the present proceeding is a

frivolous and vexatious one and is liable to be dismissed

In view of above **CO 3766 of 2024** is dismissed having no merit at all

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)