

S/L 05
28.04.2026
Court No.4
(S.R.)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

CO 228 of 2025

Sri Ranjit Kami @ Baraily & Anr.

v.

Sri Sujan Baraily & Anr.

Mr. Milindo Paul
Mr. Nabankur Paul
Ms. Sutapa Sen Paul
Mr. Bedashruti Bose
Mr. Bodhisatya Ghosh
Mr. Deepsagar Sutraj ... For the Petitioners.

Mr. Bibek Tarafder
Ms. Rishita Chakraborty
... For the Opposite Party No.2.

1. Affidavit of service filed in Court today is taken on record.
2. Learned advocate appearing for the petitioners submits that both the parties have been served.
3. While the opposite party no.2 is represented, there is no representation on behalf of the opposite party no.1. The opposite party no.2 is the wife of opposite party no.1.
4. This revisional application is directed against an order dated October 30, 2025 passed by the learned Additional District Magistrate (G), Jalpaiguri in Appeal No.02 of 2025 preferred under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the said Act of 2007').

5. The petitioner nos.1 and 2 are respectively the father and mother of the opposite party no.1 and in-laws of the opposite party no.2. They had filed an application under Section 4 read with Section 5 of the 2007 Act before the Sub-divisional Magistrate, Mal Sub-division, Jalpaiguri thereby, *inter alia*, praying for an order for eviction of the opposite party nos.1 and 2 from the house of the applicant, and payment of maintenance (interim as well as final).
6. It was the petitioners' case that the petitioners are absolute owners of the house constructed by them on a land mentioned in the said application that had been allotted to the applicant no.1. It was contended in the application that excepting one room the entirety of the house was under occupation of the opposite parties.
7. The said application was disposed of on contest by the Sub-divisional Magistrate, Mal Sub-Division, Jalpaiguri by an order dated December 4, 2024 thereby directing the opposite parties to pay a monthly sum of, at least, Rs.6,000/- to the petitioners.
8. The said order was carried in appeal under Section 16 of the 2007 Act before the learned District Magistrate. The appeal was disposed of by an order dated October 30, 2025 by the learned Additional District Magistrate (G), Jalpaiguri thereby enhancing the maintenance (including the medical

expenses to the tune of Rs.8,000/- per month) and directing the opposite parties to vacate the shop room situated in the house constructed by the petitioners. However, no direction has been passed as regards the rooms, which are alleged to have been in occupation of the opposite party nos.1 and 2. Hence the revisional application.

9. Learned advocate appearing for the petitioners submits that while initially, at the time of filing of the application before the learned Sub-divisional Magistrate, Mal Sub-division, Jalpaiguri, all the rooms of the house excepting one had been occupied by the opposite parties, upon lodging an FIR on July 7, 2024, the opposite parties opened some rooms and retained possession of two rooms and one shop room. He submits that the learned Appellate Tribunal constituted under the 2007 Act has committed a serious error in not passing an order of eviction of the opposite party nos.1 and 2 from the said rooms.
10. In support of his contention, he relies on a judgment of the Hon'ble Supreme Court in the case of *Kamalakant Mishra v. Additional Collector & Ors.*, reported at 2025 SCC OnLine SC 2077.
11. Learned advocate appearing for the opposite party no.2 invites the attention of this Court to the enquiry report prepared by the District Social Welfare Officer and submits that it is the opposite parties' case that the locked rooms and the shop

room were constructed by the opposite party no.1, and that, the opposite party no.2 intends to reside in the said house.

12. She further invites the attention of this Court to the enquiry report dated October 26, 2025 prepared by the jurisdictional police authorities and submits that it would reveal therefrom that all rooms and doors were open for the petitioners barring one, which remain locked as the opposite parties had kept their valuables and ornaments there. It is further submitted by the opposite party no.2 that the opposite party no.2 being the wife of the opposite party no.1 has right to reside at the matrimonial home.
13. Learned advocate appearing for the petitioners submits that such a report does not indicate the true state of affairs.
14. Learned advocate appearing for the petitioners further cites a Coordinate Bench judgment of this Court in *Ramapada Basak & Anr. v. State of West Bengal & Ors.*, reported at 2021 SCC OnLine Cal 2161 and submits that this Court while following the dictum of the Hon'ble Supreme Court in the case of *S. Vanitha v. Deputy Commissioner, Bangaluru Urban District*, reported at 2020 SCC OnLine SC 1023 had observed that right of senior citizen to exclusively reside in his own house, must be viewed from the prism of Article 21 of the Constitution of India.

15. Heard learned advocates appearing for the respective parties and considered the material on record. The order impugned herein has been challenged only by the petitioners and not by the opposite parties.
16. In such view of the matter, the opposite parties have accepted the order insofar as the direction to vacate the shop room of the premises is concerned and the direction towards payment of maintenance and arrears thereof are concerned. As regards the direction for vacating the two rooms which have been alleged to be under the occupation of the opposite party nos.1 and 2, it is noticed that the learned Appellate Tribunal has not deliberated upon the said aspect at all. It is noticed that the petitioners have consistently prayed for eviction of the opposite parties from the property over which the petitioners claim ownership. There is nothing on record to show that the learned Appellate Tribunal has bestowed attention upon such aspect of the matter. In the light of the judgment of the Hon'ble Supreme Court in the case of *Kamalakant Mishra (supra)*, the learned Appellate Tribunal must come to a firm conclusion as regards the petitioners' prayer in respect of the other two rooms which have been alleged to be under lock and key or even the one room (as indicated by the opposite party no.2 while relying on the report of the police

authorities). There is no reason in the order why the same should not be vacated.

17. For the aforesaid limited purpose, the matter is remitted to the learned Appellate Tribunal. The learned Appellate Tribunal shall hear the petitioners as well as the opposite parties and pass appropriate orders as regards the other room or rooms that are in possession of the opposite parties in accordance with the provisions of 2007 Act and the law governing the field.
18. It is clarified that the other directions including the direction as regards payment of maintenance to the tune of Rs.8,000/- along with ancillary direction for payment of interest on arrears as well as the direction upon the opposite parties to vacate the shop room are not interfered with.
19. The learned Appellate Tribunal is requested to dispose of the matter as expeditiously as possible and preferably within a period of one month from the date of communication of the order upon hearing all the parties.
20. CO 228 of 2025 stands disposed of with the aforesaid observations. No costs.
21. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)