

OD-4

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE**

**APOT/74/2026
With
EC/520/2019
IA No. GA/1/2026, GA/2/2026**

**USHA DEVI
-VS-
SHIVANI PROPERTIES PRIVATE LIMITED AND ANR.**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant	:	Mr. Mr. Aritra Basu, Adv.
For the Respondent No.1	:	Ms. Arunima Lala Sengupta, Adv. Mr. Rohit Banerjee, Adv. Mr. Sagnik Mukherjee, Adv.
For the Respondent No.2	:	Mr. Ranjit Singh, Adv. Ms. Subharchita Mukherjee, Adv.
HEARD ON	:	05.05.2026
DELIVERED ON	:	05.05.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against judgment and order dated April 7, 2026 passed in IA GA/5/2025 in CS/223/2013 EC/520/2019.

2. Learned advocate appearing for the appellant submits that, appellant filed an application under Order XXI Rule 99 of the Code of Civil Procedure, 1908. Without disposing of such application, learned executing Court passed the impugned order directing the Special Officer to take and make over possession of the suit premises to the respondent no.1.
3. Learned advocate appearing for the appellant submits that, the appellant is the mother of the original tenant under the original landlord. Appellant was in possession of the suit premises. Without disposal of the application under Order XXI Rule 99 of the Code of Civil Procedure, 1908, executing Court erred in directing possession to be granted.
4. Learned advocate appearing for the respondent no.1 submits that, the respondent no.1 filed a suit for eviction against the respondent no.2. She submits that, in the written statement, respondent no.2 took a stand that the appellant was the tenant or at least in occupation of the suit premises. Such a contention that, the appellant was a tenant or a person concerned in the suit premises, was negated by the judgment leading to the decree which was put into execution.
5. We find from the records that, the respondent no.1 filed a suit for eviction being CS/223/2013. Suit was decreed on January 25, 2018. Appeal directed against the decree dated January 25, 2018 was dismissed. Decree was put into execution by way of EC/520/2019.

6. In the execution proceeding, the respondent no.1 as decree holder, filed an application being IA GA/2/2022 seeking relief with regard to *mesne profit* and possession of the suit property.
7. Issue as to whether or not, the appellant before us was in possession of the suit property was decided in the decree which binds the parties. The appellant before us is not claiming a title which is independent of the defendant in the suit for eviction.
8. Respondent no.1 is entitled to the usufruct of the decree passed which was affirmed on appeal.
9. Court is informed that the respondent no.1 was put in possession of the suit premises on May 2, 2026.
10. In such circumstances, we find no merit in the present appeal.
11. APOT/74/2026 is dismissed along with connected applications, without any order as to costs.

(DEBANGSU BASAK, J.)

12. I agree

(MD. SHABBAR RASHIDI, J.)