

District: South Andaman, A & N Islands.

**COURT OF CIVIL JUDGE (JUNIOR DIVISION), 1st COURT,
PORT BLAIR**

Present : Sri. Sanjay Dutta

Title Execution Case No. 04 of 2014

CIS No. 18 of 2014

(Arising out of Decree of Title Suit No. 35 of 2011)

Order No. 104 dated 10.07.2026 :

Today is fixed for further hearing of the acceptance of the report as filed by the commissioner.

DHR and JDR are present before the court with their Ld. Advocates by filing their respective attendance.

Ld. Advocate for the JDR submits that he had filed a petition u/s 151 of CPC today for recalling order No. 103 dated 03.07.2026 on the ground that the instant case record had been fixed today for further hearing of the acceptance of report as filed by the commissioner vide order No. 102 dated 24.06.2026 but the DHR have filed a put up petition 03.07.2026 for issuance of Writ upon seal bailiff of the court for execution of the decree without serving the copy of the said petition to JDR which had been allowed by this court vide Order No. 103 dated 03.07.2026. she further submits that if the report of the commissioner yet not been accepted by this court then how could seal bailiff of the court execute the decree on the basis of the commissioner report, therefore, prays before the court for recalling order No. 103 dated 03.07.2026.

Ld. Advocate for DHR raised strong objection against the submission of the JDR on the ground that this report only regarding to the identification of the property, therefore, submit before the court for rejecting the instant petition.

Heard the submission of both the sides and perused the case record.

It is pertinent to mention here the provision of **section 151 of CPC** which is as follows:

Nothing in this court shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

*The inherent power of a court is in addition to and complementary to the powers expressly conferred under the CPC. But that power cannot be exercised if it is inconsistent or in conflict with any of the powers expressly or by necessary implications conferred by the other provisions of the CPC as held by the Hon'ble Supreme Court of India in case of **K.K. Velusamy vs. N. Planisamy-(2011) 11 SCC 275.***

Therefore, this court is of the considered opinion that recalling a judicial order is permitted u/s- 151 of CPC only if certain conditions exist in order to prevent an abuse of process of court.

It is also pertinent to mention here the observation of the Hon'ble Supreme Court of India in case of **Budhia Swain vs. Gopinath Deb-(1999) 4 SCC 396** wherein it is categorically held that “*in our opinion a tribunal or a court may recall an order earlier made by it if*

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such land of jurisdiction is patent,

(ii) there exist fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party, or

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment/order will not be exercised when the ground for reopening the proceedings or vacating the judgment/order was

available to be pleaded in the original action but was not done or were a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment/order may be lost by waiver, estoppel or acquiescence.”

In light of the aforementioned view of the Hon’ble Supreme Court of India, this court find it essentials as prescribed there have been fulfilled for recalling the order, therefore, in light of the provision of section 151 of CPC along with the above view rendered by the Hon’ble Supreme Court of India in case of **Budhia Swain vs. Gopinath Deb-(1999) 4 SCC 396**, this Court is inclined to allow the instant petition as filed by the plaintiff u/s- 151 of CPC for recalling the order no. 103 dated 03.07.2026 for the ends of justice on the ground that if the report yet not been accepted then seal bailiff could not execute the order of the court based on the said report. Further this court is of the view that to recall Writ/Warrant which have been issued by this court on 08.07.2026 and the report of the seal bailiff on the basis of the said Writ/Warrant.

Hence, it is

ORDERED

that the petition as filed by the JDR u/s- 151 of CPC dated 10.07.2026 for recalling the order no. 103 dated 03.07.2026, is allowed on contest.

The order no. 103 dated 03.07.2026 alongwith Writ/Warrant issued by this court on 08.07.2026 and report as submitted by seal bailiff on the basis of said Warrant/Writ is recalled as per the above observation.

The JDR have the last opportunity to file written objection against the report of the commissioner by the next date fixed other wise this shall accept the report of the commissioner on the next date.

Fix 22.07.2026 for further hearing of acceptance of report as filed by the commissioner. WO by the JDR in the meantime positively.

D & C by me

**CJJD 1st Court, Port Blair
South Andaman, A & N Islands**

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