

Misc. Appeal 24/2025
(CNR No.001834-2025)

Order No.05 dated 23.12.2025

The record is placed by virtue of a put up application filed on behalf of the appellant, along with scores of documents in support of a separate application for a prayer of "Stay of operation of Other Execution Case No.16 of 2025" pending before the Ld. Civil Judge (Jr. Divn.) 2nd Additional Court at Contai.

It is the contention of the Ld Advocate for the appellant that, the original Pre-Emption Misc. Case being No. Judicial Misc. Case (P) Case No.61 of 2022 was decreed in favour of the petitioners (therein) by the judgment and order dated 03.07.2025. The appellants being aggrieved and dissatisfied with the said judgment and order have preferred the present appeal which has duly been admitted and the date is already fixed on 22.01.26 for S/R and AD and for the appearance of the respondents.

He further submits that the petitioners therein/(respondents herein), have filed the Other Execution Case no 16 of 2025 and in the said execution proceeding the Warrant of delivery of possession through execution, have already been issued by the Ld Executing Court and the returnable date has been fixed on 05.02.26.

In support of his contentions the Ld. Advocate have also annexed a searching slip in respect of the Other Execution Case No.16 of 2025, to justify and show before this Court, that there is extreme urgency in the matter and unless the prayer for stay of operation of the execution proceeding is passed by this court, the present appeal would be materially altered, leading to much intricacies in future, which may even require restitution under section 144 of the C.P.C subsequently.

The Ld Advocate for the appellant further submitted that the question of "Oral Heba" that have been "allegedly executed in favour of the appellant" and "which has been subsequently reduced to writing and did not require registration" were the moot defence taken by the appellant before the Ld Trial Court. Evidences have been adduced in this regard, but that contention/defence was discarded by the Ld Trial Court, which is why the pre-emption case was adjudicated in favour of the respondents holding that the registration of such an "oral heba" reduced to writing was essentially required to be registered.

This is the only legal question on which the merit in this appeal is rested.

In support of his contentions and to refute the finding of the Ld Trial Court, the Ld Advocate for the appellant have cited the solemn Judgment passed by the Hon'ble Supreme Court of India in Civil Appeal No.1714 of 2005 dated 05.05.2011 in the case of ***Hafeeza Bibi and Others vs. Shaikh Farid(Dead) by Lrs and others.***

Heard the Ld. Advocate for the appellant in details.

Perused the original judgment passed by the Ld Trial Court.

It is of great relevance that the said question of law, if decided in favour of the appellant would/may alter the original finding made by the Ld Trial Court

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for the simple reason that, the defence raised by the appellant in the moot proceeding was that he was a 'bargadar' and a cultivator of the land which has been disposed of by the impugned sale deed, and prior to the impugned sale, he was delivered with certain portion of the subject matter land in the deed, by way of an "oral heba" which has been reduced to writing. Thus the evidences in this regard would be of paramount consideration for this court in appeal, to justify whether the claim of the appellant that he was a co-sharer in the property was valid or not.

Now with regard to the question of compulsory registration of the Hebanama, the para 18 and para 25 to 29 of the aforesaid solemn Judgment of the Hon'ble Apex Court passed in Hafeeza Bibi (*Supra*) is of great relevance and registration of such "oral heba when reduced to writing" was held to be not mandatorily registrable, provided the other conditions of "oral heba" under the Muhammadan Law are met and complied with. These aspects are to be scrutinized by this court in appeal with references to the evidences that have been already recorded in the trial.

But in such context and in view of the said question of law involved in this appeal, this Court finds that there is not only merit in this appeal, but at the same time if the Warrant of possession in execution proceeding by virtue of the Writ that has already been issued by the Ld Executing Court is executed, then the present appeal is likely to be prejudiced leading to further intricacies amongst the parties.

Now on perusal of the entire case record in the present Misc. Appeal 24 of 2025, it seems that the next date has already been fixed on **22.01.2026** for the service of process and for the appearance of the respondents and on the other hand the returnable date in the Other Exe Case no 16 of 25 have been fixed on 05.02.26.

Thus in the interest of justice, an interim order of stay for this interim period, will be apt and justified so that this appeal may be adequately dealt with in presence of both the parties and without material alteration through execution of the writ of possession.

Hence it is,

ORDERED

that **the Execution Case No.16 of 2025 pending before the Ld Civil Judge (Junior Division) 2nd Additional Court at Contai, is Stayed till 22.01.2026 in the interim** and the Writ of Execution already passed in the Other Execution Case No.16 of 2025 be **recalled at once**, and **kept in abeyance by the Ld Executing Court, till the said date, unless extended further.**

Let a copy of this order be transmitted to the Ld Executing Court forthwith for information and compliance.

To date for service of process and for appearance of the respondents and for further orders.

D/C by me,

Addl. District Judge, 2nd Court,
Contai, Purba Medinipur

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