



D/L. 10.
June 16, 2026.
MNS.

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CO No. 83 of 2026

Sri Rakhal Chandra Dutta and another
Vs.
Sri Sukhendra Nath Banik

Mr. Abhimanyu Banerjee,
Ms. Mamataj Khatun, Advs.

...for the petitioners.

1. The present challenge has been preferred against the dismissal of an application filed under Section 47 of the Code of Civil Procedure (in short "the Code") by the judgment-debtors/petitioners.
2. Learned counsel appearing for the petitioners argues that the decree obtained by the plaintiff/ decree-holder/opposite party was in the nature of declaration of his title and permanent injunction restraining the judgment-debtors/petitioners from disturbing the alleged possession of the decree-holder/opposite party.
3. However, an execution case was levied by the decree-holder/opposite party subsequently on the strength of the said decree, claiming recovery of possession of the suit property.



4. Learned counsel for the petitioners submits that in the absence of any specific averment that the decree-holder/opposite party was originally in possession and was subsequently dispossessed by the judgment-debtors/petitioners in contravention of such decree, the execution case recognizes that the decree-holder was never in possession of the suit property at all.

5. Thus, it is argued that the said execution case is not maintainable in pursuance of the decree as it stands.

6. However, there is a distinction between claiming that a decree, as it stands, is inexecutable, which is the ambit of Section 47 of the Code, and an execution case being not maintainable in its present form.

7. The judgment-debtors might have an arguable case insofar as whether an execution case claiming possession is maintainable without any averment of subsequent dispossession, on the strength of a decree of permanent injunction, but the same pertains to the maintainability of the execution case and not the veracity or validity of the decree itself.

8. In paragraph no. 10 as well as the prayer portion of the application under Section 47 of the Code of Civil Procedure, the judgment-debtors/petitioners have claimed that the decree passed in the suit be declared null and void and inexecutable.

9. However, the arguments made in support of such allegation and prayer at best pertain to the maintainability



of the execution case and not the validity of the decree itself.

10. Moreover, from the meat of the averments made in the application under Section 47 of the Code, it is evident that the judgment-debtors/petitioners now seek to raise questions which were decided conclusively in the decree.

11. It is trite law that the Executing Court cannot go beyond the decree in the garb of an application under Section 47 of the Code.

12. Thus, the Executing Court was justified in dismissing the application of the petitioners under Section 47 of the Code.

13. However, it is made clear that nothing in the impugned order and/or the outcome of the present revisional application shall preclude the judgment-debtors/petitioners from filing a proper written objection to the execution case and to resist the same on the ground that the same is not maintainable in its present form, in the context of the decree sought to be executed.

14. If such an objection is filed, the Executing Court shall grant opportunity to both parties to be heard and decide the same in accordance with law on its own merits without being unnecessarily influenced by the impugned order or the observations made in the present revisional application.

15. In the light of the above observations, CO No. 83 of 2026 is disposed of without interfering with the impugned



order, bearing order no. 44 dated February 20, 2025 passed by the learned Civil Judge (Junior Division) at Alipurduar in Miscellaneous Case No.5 of 2025, arising out of Title Execution Case No. 4 of 2025.

16. There will be no order as to costs.

17. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)