

20.08.2026

Item No.21

Ct. No. 8

sg

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

CO 114 of 2026

**Sri Rakhal Chandra Dutta & Anr.
Vs.
Sri Sukhendra Nath Banik**

Mr. Abhimanyu Banerjee

Ms. Mamataj Khatun

.....For the Petitioner.

- 1.** The revisional application has been filed against an order dated June 29, 2026 passed by the learned Civil Judge (junior Division) at Alipurduar in Title Execution Case No. 04 of 2022 arising out of Title Suit No. 112 of 2010 whereby writ of execution has been issued including restoration of possession and to demolish the structure.
- 2.** It is contended before this Court by the learned advocate that the present petitioners are the owners of the disputed property by virtue of registered deed of conveyance executed in the year 1998 and was in possession thereafter.
- 3.** The opposite party herein despite such transfer made in favour of the present petitioners filed the Title Suit No. 112 of 2010 by suppression the entire facts ,against the present petitioners for declaration and injunction.

4. An ex parte decree was obtained by the opposite party and the execution case was filed and came the petitioners have come to learn about the order for the first time when the bailiff went for execution of the decree and intended to take possession of the property.
5. Being aggrieved thereby a revisional application was filed being CO 83 of 2026 and vide order dated June 16, 2026 that revisional application was disposed of directing the Executing Court to allow present petitioners to file written objection and to hear the matter ,granting an opportunity of hearing to both the parties. In consonance with such order learned Executing Court heard the matter and by vide an order dated June 29, 2026 refused to consider the written objection and proceeded with the execution case and issued the writ of execution. Being aggrieved thereby the petitioners have filed the instant revisional application .
6. It is the contention of the learned advocate that due to suppression of the entire fact of transfer of the suit property by virtue of registered deed of conveyance in favour of the present petitioners by the opposite parties , obtained the Exparte decree beyond the knowledge of the present petitioners. The petitioners have challenged the decree by filing

an appeal and unless present petitioners are given an opportunity to place their case they will be highly prejudiced.

7. Heard submission and perused materials-on-record as well as order impugned . Admittedly the suit Was filed for declaration and injunction and no prayer was made for recovery of possession since they always maintained to be in possession which is challenged by the petitioners .The alleged deeds were executed prior to the institution of the suit and the decree was passed Ex-parte. Mere production of various communication made before the authority per se do not establish the possession of a party when there is a Registered Deed of Sale.

8. Hence, an arguable case is made out by the petitioner for which the revisional application is required to be heard.

9. Petitioners are directed to serve copy of the revisional application upon the opposite party and to file affidavit of service on the next date of hearing.

10. Let there be an interim order of stay of the order passed on June 29,2026 by the learned Executing Court for a period of two weeks from this date .

11. Matter be listed before the first available Circuit Bench.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Hon'ble High Court.

[Chaitali Chatterjee (Das), J.]