

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal Nos. _____ of 2026
(Arising out of SLP (C) Nos.16152-16197 of 2022)**

Raj Kumar Ghosh and Anr. ...Appellant (s)

Versus

Jyoti Biswas and Ors. ...Respondent (s)

ORDER

Leave granted.

2. The impugned order dealt with a cluster of appeals arising from a common judgment and order dated 16.08.2018, passed in an Execution Petition whereby and whereunder the occupiers of an immovable property were directed to be dispossessed. The appellants before the Division Bench of the High Court were the persons who obstructed their eviction in the Execution Petition, filed on the strength of a Compromise Decree.

3. We heard Dr. Devashish Bharuka, learned Senior Counsel appearing for the Appellant, Mr. Arup Banerjee, learned AoR, Mr. Debojyoti Bhattacharya, learned Counsel, Ms. Mrinmoi Chatterjee, learned AoR and Mr. Sunando Raha,

learned Counsel for the respondents. We also heard Ms. Ayantika Roy, the learned Advocate-Receiver.

4. We have to briefly look at the facts which commence from 1940, when the original owner of the land, one Deba Prasad Gooptu had leased out the subject land to one Probodh Chandra Mitra, who was running a hotel under the name of Bristol Hotel, as sole proprietor. Both the owner and the tenant are no more and we would refer to the owner and tenant as the Gooptus and Mitras, which will take in their successors. The appellant herein represents one Bando & Company, who obtained a lease for 99 years from the Gooptus, while the lease of Mitras was subsisting; hereinafter termed the Bando. The respondents herein who were the appellants before the Division Bench of the High Court, were persons who were allegedly inducted into the property by the Mitras; termed as sub-tenants.

5. The original Gooptu, on 12.08.1953, issued a notice to quit against the Mitra who succeeded to the original Mitra. A suit was filed as Suit No.1059 of 1954, referred to in the impugned order as the first suit, seeking possession of the

property and for recovery of arrears of rent. On the original plaintiff's death, his son substituted himself and the successor Mitra having died, the executor of his Will substituted herself as the defendant. The successor Gooptu executed a registered lease in favour of Bando on 06.02.1978 and he too passed away in 1983. Bando attempted to substitute themselves in the suit as a plaintiff, which application was dismissed and the first suit stood abated.

6. Later, a suit was filed by Bando on 25.07.1984 against the Mitras claiming *inter alia* declaration that the tenancy created by the original Gooptu in favour of the original Mitra, was duly determined and terminated and the same is binding upon the heirs of the original Mitra. That suit too stood dismissed for default and after 10 years, it was revived and Bando with the successor in interest of Mitras, entered into a compromise. It is this Compromise Decree which was sought to be executed in E.C. No.146 of 2017.

7. The impugned order in the leading judgment found doubtful, the claim of Bando on many grounds. First, it was noticed that when the original suit stood dismissed, by fiction

of law, everything under the said suit, including the cause of action, ceases to have binding force. There was no notice to quit issued against the Mitras by Bando and even if a suit for eviction could be filed without such notice, the impugned order doubted the very creation of tenancy on Bando. The doubt was expressed since, the right to future rent being a right in the immovable property, could be legally effected only in accordance with Section 54 of the Transfer of Property Act, 1882, especially when the right to receive future rent is a right attached to and running with the immovable property. It was found that the rights of Bando itself being under a cloud, it required a detailed adjudication as to whether by the 1978 instrument, Bando stepped into the shoes of the Gooptus.

8. After the abatement of the first suit, the status of Mitras *vis-à-vis* the Gooptus, was also to be adjudicated. Another issue open for adjudication was found to be whether the sub-tenants who were inducted in the suit property from time to time by the Mitras, had an independent right or not, especially since an order of eviction against the lessee would

bind the sub-lessee, especially when the sub-lease was created without the knowledge or concurrence of the lessor. Noticing Order XXI Rules 97 to 103 of the Code of Civil Procedure, 1908, it was found that by implication, the right, title and interest of a person obstructing execution; asserting that he is not bound by the decree, would have to be determined by the Court in a proper adjudication of the claims and objections. On finding the objections to be unsustainable, though the court can direct possession to be delivered, even evicting a person who was not impleaded in a suit; as per Order XXI Rule 35, there should be a meaningful consideration which requires all questions including the questions relating to title or interest in the property to be determined through a detailed fact-finding inquiry. It was directed that the Executing Court had no option but to go for a detailed trial on evidence, for complete adjudication of right, title and interest of the obstructionist in the property.

9. The concurring judgment also noticed that the suit was filed on the strength of the original notice to quit issued by the Gooptus, when there was a suit filed on that notice,

earlier, which stood abated. The proceeding in the second suit was specifically noticed to find that, *prima facie*, even if there can be no collusion alleged at the time of the institution, but at least at the time of entering into a compromise, there is an element of collusion. The Mitras or their successors had nothing to lose at that point of time since the property was occupied by the sub-tenants and there was only the question of rent payment. It was noticed that the decree in the second suit was more a surrender rather than a compromise and there is also a question of how the sub-tenants came into possession.

10. The question as to whether the tenancy survived to the Mitras was found to be relevant, since that would determine the status of the sub-tenants. If, in fact, the tenancy was determined with the notice to quit in the year 1953, then the Mitras were trespassers and the sub-tenants inducted thereafter would also be trespassers. In that context, the Compromise Decree, though binds the Mitras, it does not bind the sub-tenants, since they would be mere trespassers

who could claim that they should have been necessarily impleaded in the suit.

11. We are of the opinion that quite profound legal issues have been raised in the impugned order, and we find absolutely no ground to interfere with the same. We dismiss the appeals, but however, request the Execution Court to expedite the adjudication as directed by the impugned order and endeavour to conclude it within a period of six months from today.

12. We are quite conscious of the fact that the impugned order has directed consideration of the individual claims of the sub-tenants, in which circumstance we say that an endeavour be made to conclude as expeditiously as possible. We make it clear that the adjudication has to be on its merits with respect to the rights of the respective parties, but the legal issues raised in the impugned order has to be considered and dealt with while adjudicating the individual claims. Here we make it clear that the receiver shall continue to be in possession of the property and those who are remaining as occupiers shall pay the rent as indicated by us

in our earlier orders to the receiver. The receiver's possession shall continue till orders are passed in the execution petition. The appellants shall continue paying the remuneration per month to the receiver as fixed till the orders are passed in the execution petition. It is made clear that the right of the obstructors shall be adjudicated and if found to be existing, *de hors* them not being in possession as of now, they shall be put back in possession.

13. The appeals stand dismissed with the above observations.

14. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
SEPTEMBER 23, 2026.**