

SUPREME COURT OF INDIA

Prasantha Banerji

Vs.

Pushpa Ashoke Chandani

C.A.No.2151 of 2000

(Ajay Prakash Misra and R. P. Sethi, JJ.)

16.03.2000

ORDER

1. Substitution allowed.

2. Leave granted.

3. The present appeal is directed against the judgment and order dated 11-2-1999 passed by the High Court of Calcutta. The only point raised in this appeal is whether the suit filed by the appellant who is not party to a decree is maintainable, when execution proceeding in respect of the same property has been initiated under Order 21, Rule 97 of the Code of Civil Procedure or his remedy is going in the said execution proceedings. The High Court came to the conclusion that the suit having been filed after initiation of execution proceedings, the same is not maintainable hence dismissed the second appeal. The High Court further held that the appellant is entitled to raise all such lawful subtenancy or any of his right in the execution proceedings, under Order 21, Rule 97 of the Code. The question raised in this appeal is squarely covered by the decision of this Court in Shreenath v. Rajesh, (1998) 4 SCC 543 : (1998 AIR SCW 1619 : AIR 1998 SC 1827), as against the appellant.

Accordingly, the present appeal fails and is accordingly dismissed and the impugned order of the High Court is upheld. Cost on the parties.

Appeal dismissed.